

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of a Commission.
Initiated Proceeding to Determine
Whether Resale of Local Telephone
Service is in the Public Interest

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above.entitled matter came on for evidentiary hearings before Bruce D.

Campbell, Administrative Law Judge from the Office of Administrative Hearings in St Paul. Minnesota, on July 22, 25, 26 and 31, August 1, 2, 8, 9 and 12-16, 1991. Due to the physical incapacity of Judge Campbell, Allan W. Klein, Administrative Law Judge from the Office of Administrative Hearings completed the evidentiary hearings in St. Paul between September 23 and October 11, 1991, exclusive of weekends.

Appearances: Gregory A. Fontaine, Amy J. Klobuchar and Erik A. Ahlgren, Dorsey & Whitney, Attorneys at Law, 2200 First Bank Place East, Minneapolis, Minnesota 55402, appeared on behalf of Enhanced TeleManagement, Inc. (ETI); Gary R Cunningham, Special Assistant Attorney General, 340 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Office of the Attorney General Hubert H. Humphrey, III (OAG); Scott Wilensky, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Public Service (DPS); Joan L. Volz, William M. Ojile, Jr. and David G. Seykora, Attorneys, 200 South Fifth Street, Room 1800, Minneapolis, Minnesota 55402, appeared on behalf of U.S. West Communications, Inc., (U.S. West or USWC); Michael J. Bradley and Maureen A. Scott, Moss & Barnett, Attorneys at Law, 4800 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-4119, appeared on behalf of the Minnesota Independent Coalition (MIC); William E. Flynn, Lindquist & Vennum, Attorneys at Law, 4200 IDS Center, Minneapolis, Minnesota 55402, appeared on behalf of the Minnesota Business Utility Users Council (MBUUC); Peter L. Coffey, Michael, Best & Friedrich, Attorneys at Law, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202-4108, appeared on behalf of Teletech Resources (orp.; Joseph P. Cowin, Attorney, 5454 West 110th Street, Overland Park, Kansas 66211, appeared on behalf of United Telephone Company of Minnesota David H. Stoughton, Attorney, 300 West Service Road, P.O. Box 10804, Chantilly, Virginia 22021-9988, appeared on behalf of Fairchild Communication Services Company; Al Brodie, 1000 East 146th Street, Suite 121, Burnsville, Minnesota 55331, appeared on behalf of the Minnesota Motel Association Mark Oberlandet, Supervisor, Ben Omorogbe, Analyst, and Margie

Hendriksen, Special Assistant Attorney General, 707 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Public Utilities Commission. Christopher K. Sandberg, Operman & Paquin, Attorneys at Law, 2200 Washington Square, 100 Washington Avenue South, Minneapolis, Minnesota 55401, appeared, for a limited purpose, an behalf of the Minnesota Association for Shared Service Equity (MASSE).

The record of this proceeding closed on March 11, 1992, with the receipt by the Administrative Law Judge of the final comment relating to reopening the evidentiary record.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the Rule; of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Executive Secretary, Minnesota Public Utilities Commission, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and 13 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commission as its final Order.

STATEMENT OF ISSUES

The Notice and Order for Hearing in this proceeding, issued by the Commission on May 30, 1990, enumerated the following issues for consideration:

1. Is the resale of CENTRON/CENTREX in the public interest?
 - A. What are the benefits of the resale of CENTRON/CENTREX services to the end-users?
 - B, What are the current and projected impacts of resold CENTRON/CENTREX services on the general ratepayers of affected local exchange companies? Parties should address what impact allowing resale of CENTRON/CENTREX services would have on LEC operations, revenues, expenses and investments.
 - C. Does resale of CENTRON/CENTREX technology geographically restrict or limit resale within a local calling area and, if so, does that affect the public interest determination?

Is the resale of PBX services in the public interest?

- A. What are the benefits of the resale of PBX services to the end-users?

- B. What are the current and projected impacts of resold PBX services on the general ratepayers of affected local exchange companies? Parties should address what impact allowing resale of PBX services would have on LEC operations, revenues, expenses and investments.
 - C. Are there significant differences in how resale of local service through PBX is used to provide service to end-users? For example, does the type of services, pricing, etc. of a PBX in a hotel/motel setting differ from PBX service, pricing, etc. in a commercial office setting? If so, do the various types of PBX resale require separate regulatory consideration?
3. What is the appropriate definition or definitions of local service resellers?
 4. If resale of CENTRON/CENTREX or resale of PBX services is found to be in the public interest, what regulation should be applied? For example, what should regulations require with respect to standards in the construction and installation of equipment and service quality, duty to provide service, discrimination, and funding obligations regarding TAP, TACIP and 911? Further, do Minnesota statutes currently permit the Commission to regulate local resellers as agents of the Local Exchange Companies (LEC) through the LEC tariffs, and, if so, would such regulation be effective?
 5. If resale of CENTRON/CENTREX or resale of PBX services is found to be in the public interest, what type of rate structure would be appropriate for the LEC to provide these services to the resellers?
 6. If resale of CENTRON/CENTREX or resale of PBX services is found to be in the public interest, how should resellers price their CENTRON/CENTREX or PBX services to end-users?
 7. If resale of CENTRON/CENTREX or resale of PBX services is found to be in the public interest, what would be the LEC responsibility to the resellers and the end-users served by resellers? For example, but not limited to:
 - A. In the context of PSTS providers, Minn. Stat. 237.68 specifies LEC responsibilities regarding the location of service to a "demarcation point" on the property where the private shared telecommunications system is located. Minn. Stat. 237.68, subd. 2. The statute also specifies the LEC responsibility to provide service to anyone located within a shared tenant services building at the demarcation point "within a reasonable time upon request." Minn. Stat. 237.68, subd. 6. Should the LEC responsibilities be similarly specified in any regulation of the resale of CENTRON/CENTREX or PBX services?
 - B. What disconnection policy should govern the LEC disconnection of service to the reseller and its obligations, if any, to the reseller's customers?

C. In the event that the reseller should discontinue service to any or all of its customers for any reason, should the LEC have the responsibility as the "provider of last resort" to provide a local telephone service directly to these customers?

8. If resale of CENTRON/CENTREX or resale of PBX services is found to be in the public interest, what would be the responsibilities of the resellers to the LEC and the end-users? For example, what policy should govern?

A. The reseller's authority to disconnect service to its customers?

B. The reseller's responsibility for providing appropriate information to LEC for use in directories, for 911 service, and for other customer record keeping purposes.

9. If resale of CENTRON/CENTREX or resale of PBX services is found to be in the public interest, should the Commission grant authority on a statewide basis or limit that authority to specify geographic service areas?

10. Are there differences between geographic service areas within the state that would render resale of CENTRON/CENTREX service or the resale of PBX services in the public interest in some service areas and not in the public interest in others?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. JURISDICTIONAL AND PROCEDURAL HISTORY

1. On March 12, 1987, Duddy Limited Partnership filed a petition for a certificate of public convenience and necessity to resell local telephone service to the tenants of its downtown Minneapolis building. In the Matter of the Petition of Duddy Limited Partnership for Certificate of Public Convenience to Resell Long Distance and Local Service in Minnesota P-467/M-86-141, April 29, 1987.

2. The Commission initiated an investigation into the resale of local telephone service following the Duddy Petition. In the Matter of an Investigation by the Minnesota Public Utilities Commission into the Resale of Local Telephone Service, P-999/CI-87-228, April 29, 1987. The Commission directed the Department of Public Service (DPS) to investigate the resale of local telephone service. The DPS submitted a report entitled "The Report on the Resale of Local Telephone Service" to the Commission on November 5, 1987.

3. On August 1, 1988, the Commission closed its investigation, P-999/CI-87-228, and initiated a generic rulemaking proceeding on the resale and sharing of local telephone service. In the Matter of a Rulemaking by the Minnesota Public Utilities Commission Governing Resale and Sharing of Local Telephone Service, P-999/R-88-357, August 1, 1988. The Commission solicited comment and analysis on eight questions. After reviewing the comments submitted by various entities including U.S. West Communications, Enhanced

TeleManagement, Inc. (ETI), office of the Attorney General (OAG) and the DPS, the Commission established an advisory task force, composed of representatives from regulatory agencies, local exchange companies (LECs), resellers, sharers and the Minnesota business community, to gather additional information and report to the Commission. This task force met five times. In November of 1989, the Commission staff Submitted a report to the Commission summarizing the work of the task force.

4. In a December 19, 1989 Order in the Docket 88-357 rulemaking proceeding, the Commission found that it had an insufficient record to determine whether the resale of local telephone service was in the public interest. The Commission ordered a public hearing, and also directed USWC to file a study on the impact of local resale on its customers, operations, revenues and expenses.

5. In response to the Commission's December 19, 1989 Order, USWC filed the study referenced in the previous Finding on January 31, 1990, FTI Ex. 119 p) ,

6. On April 17, 1990, the Commission issued a Notice to all parties to the Docket 88-357 rulemaking proceeding that the Commission was severing the local resale issue for a contested case hearing. The Commission stated that the USWC study did not provide the Commission with sufficient information to proceed with the rulemaking docket. As a result, the Commission severed the resale issue for a contested case hearing and opened this generic investigation docket, Docket No. P-999/Cl-90-235. The Commission advised the parties to the rulemaking docket how they could intervene in the contested case and invited comment on a list of potential issues to be resolved in the contested case proceeding.

7. On May 30, 1990, the Commission issued its Order Severing local Resale Issue, Initiating Separate Local Resale Docket and Notice and Order_for Healing (Hearing Order). The Commission referred ten issues to the Office of Administrative Hearings for a contested case hearing. Hearing Order, p. 5. The Order names USWC, DPS, FTI, OAG and MIC as parties to the proceeding. Hearing Order, p. 8. All other interested parties were advised how to intervene and the consequences of failing to participate. Hearing Order, p. 8.

R. Pursuant to Minnesota Rules Part 1400.6500 (1990), prehearing

conferences were held on June 21 and October 8, 1990. A Prehearing Order was issued on November 29, 1990. That Order established a hearing schedule and procedural guidelines for the conduct of the hearings.

Q. Petitions for intervention were filed pursuant to Minn. Rules pt. 1400.6200 (1990). The following were made parties to this proceeding: USWC, DPS, OAG, ETI, MIC, Minnesota Business Utility Users Council (MBUUC); United Telephone Company of Minnesota; Fairchild Communications Services Company; Teletech Resources Corporation; and the Minnesota Motel Association. Centex TeleManagement Company initially intervened, but later withdrew.

10. On January 23, 1991, the OAG, DPS, MIC, ETI and USWC stipulated to an extension of the hearing schedule in order to accommodate analysis of USWC's cost, revenue and contribution study in the direct testimony of the nonreseller parties.

11. DPS moved to suspend the proceedings on April 24, 1991, based on its belief that USWC and ETI were engaged in settlement negotiations. On May 1, 1991, the Administrative Law Judge suspended the start of the hearing for 30 days and ordered a prehearing conference be held on May 28, 1991. At the May 28, 1991 prehearing conference, the Administrative Law Judge ordered evidentiary hearings to begin on July 22, 1991.

12. On April 29, 1991, the Minnesota Association for Shared Service equity (MASSE) moved to intervene for the limited purpose of moving to strike prefiled testimony related to Private Shared Telecommunications Service (PSTS). DPS filed a similar motion to strike. On June 18, 1991, the Administrative Law Judge denied the motions of DPS and MASSE to strike the testimony. The Administrative Law Judge did, however, permit any PSTS provider that was not already a party to the proceeding to file testimony by July 9, 1991. No PSTS provider filed testimony. In that same ruling, the Administrative Law Judge determined that issues related to PSTS would not be considered in this proceeding because that subject matter had not been noticed in the Commission's Order for Hearing of May 30, 1990. On the contrary, the Hearing Order specifically excluded a consideration of PSTS issues.

13. On July 1, 1991, DPS filed a motion for clarification of the Commission's May 30, 1990 Order, due to the passage of Minn. Laws Ch. 154 (1991), which exempted hotels and motels from the definition of telephone companies. In connection with this motion, the Minnesota Motel Association notified the Administrative Law Judge by letter that due to the passage of this law, the public interest of services provided by hotels and motels had been decided determinatively. The Association withdrew from this proceeding. DPS sought guidance from the Commission as to whether testimony should be considered regarding the rates charged by hotels and motels. The Administrative Law Judge certified that Motion for Clarification to the Commission by Order dated July 5, 1991. The Commission has not acted upon the certified motion.

14. On October 9, 1991, the Administrative Law Judge granted the OAG's motion to strike portions of USWC's testimony and studies relating to small sharers, who are nonresellers who use the USWC joint user tariff.

DISCUSSION

FTI characterizes this proceeding and the legal standard to be applied as directly related to its current regulatory status. ETI requests that the Administrative Law Judge conclude that ETI is currently authorized to resell local exchange service in Minnesota, including resold CENTRON, either as a consequence of estoppel, or as a consequence of the certificate it obtained from the Commission in 1984. Initial Brief of Enhanced TeleManagement, Inc., December 10, 1991, pp. 76-89; Reply Brief of Enhanced TeleManagement, Inc.,

January 7, 1992, pp. 11-12, p. 36. Although the Administrative Law Judge rejects the position of ETI, in later Findings, the following is a summary of

the procedural history relating to ETI and its certificate. On April 19, 1984, Enhanced TeleManagement, Inc. filed an application with the Commission

requesting a certificate of authority to "resell telephone services in the State of Minnesota." Appendix to Initial Brief of Enhanced TeleManagement_ Inc., tab 1. On May 1, 1984, the Commission granted the application of ETI with the following statement: "Approve application for authority to resell telephone service in the State of Minnesota." Appendix to Initial Brief Enhanced TeleManagement, Inc., tab 2.

After the grant of its certificate, ETI began reselling interstate and intrastate telephone services, including the resale of the then Northwestern Bell CENTRON product. In 1987, the staff of the DPS reported to the Commission in Docket No. P-999/CI-87-228 that ETI was engaged in the resale of local service. Appendix to Initial Brief of Enhanced TeleManagement, Inc., tab 4. During the task force proceedings in 1988 in Docket No. P-999/R-88-357, the rulemaking docket, the Commission staff heard discussions in which ETI was described as reselling local service. On August 9, 1990, the Commission issued a notice of its intent to determine ETI's scope of authority under its 1984 certificate. The Commission accepted comments from ETI and the Minnesota Business Utility Users Council. The Commission later issued its Order Granting Temporary Authority to Resell Local Telephone Service and Deferring Consideration of Refunds, P-449/M-84-169, October 10, 1990. In that document, the Commission interpreted the scope of the authority it granted to ETI on May 1, 1984. The Commission determined that the May 1 Order granted ETI no authority to resell local telephone service. Appendix to Initial Brief of Enhanced TeleManagement, Inc., tab 6. The Commission rejected the estoppel argument made by ETI. In that Order, the Commission granted ETI temporary authority to resell local telephone service "pending the outcome of the Commission's investigation into the resale of local telephone service in Docket No. P-999/CI-90-235." Appendix to Initial-Brief of Enhanced TeleManagement tab 6, p. 10. In its Notice and Order for Hearing in this case, however, the Commission did not assign for hearing any issue related to ETI's status, except as issues related to defining the requirements of the public interest would be common to both dockets.

As will be discussed with reference to the appropriate legal standard, the Administrative Law Judge considers ETI's current status to be beyond the scope of this contested case proceeding. The Commission has already rejected ETI's arguments related to governmental estoppel. To the extent that ETI participated in this proceeding as a major witness regarding the requirements of the public convenience and necessity, the Commission would be free to use the record of this proceeding in determining whether ETI should be granted a permanent certificate.

On December 20, 1991, during the pendency of this proceeding, U.S. West filed with the Commission a request to restructure and reprice its CENTRON, PBX trunk and private line tariffs. MPUC Docket No. P-421/EM-91-1002. The Commission rejected the USWC filing and stated a period of time within which the Company could refile its request. It is anticipated that USWC will refile its request prior to the Commission acting on this generic proceeding.

It should be noted that U.S. West was the only LEC providing detailed information about PBX and CENTRON resale in this proceeding. Moreover, ETI, the only CENTRON reseller to provide testimony, does not operate in ILEC exchanges. Hence, the evidence in this case is, primarily, specific to U.S. West and relies for its validity on the existing U.S. West tariffs. The Administrative Law Judge construes the hearing Order in this case to relate to existing tariffs, without speculation as to future revisions. In considering this Report, however, the Commission should be aware of the distinct possibility that the basis for the recommendation in this proceeding, the USWC CENTRON tariff, could be significantly affected in a docket likely to be the subject of evidentiary hearings in the near future. Except as required for ruling on posthearing motions filed by ETI in this proceeding, the

Administrative Law Judge has disregarded any likelihood that the CENTRON and PBX tariffs of U.S. West will be significantly reconsidered in the near future.

11. GOVERNING LEGAL STANDARDS

15. Local resellers are telephone companies, as defined in Minn. Stat. sec. 237.01, subd. 2 (1990), subject to the regulatory authority of the Commission, since they provide a telephone service to the public. Hearing Order, p. 4; Resale and Sharing of Intrastate PATS Service, P-421/C1-82-619, et seq., May 16, 1983 (HATS Order), p. 11-12; Airport systems v. NWB, P-421/C1-82-4645, June 29, 1984 (Airport Systems Order), p. 5; Minnesota Microwave, Inc. v. Public Service Commission, 190 N.W.2d 661 (Minn. 1971).

16. A facilities-based telephone company clearly must obtain authorization from the Commission to provide a local telephone service for a specific geographic area under Minn. Stat. 237.16, subd. 1 (1990). In the Matter of the Minnesota Independent Equal Access Corporation's Application for a Certificate of Public Convenience And Necessity (MIEAC Order). P-3007/NA-89-76, January 10, 1991, p. 7; Airport Systems Order p. 5.

17. Minn. Stat. 237.16, subd. 1 (1990), clearly prohibits a facilities-based telephone company from providing local telephone service in any area already served by a franchised telephone company without first obtaining a certificate of authority after a public interest determination by the Commission. MIEAC Order, p. 7; See also In the Matter of the Filing by, Metro Fiber Systems to Provide Certain Telecommunication Services Within Minneaolis and St. Paul, Minnesota (MFS Order), P-495-EM-89-80, June 16, 1989, p. 3.

18. The standard contained in Minn. Stat. 237.16 (1990), "required by the public convenience and necessity", applies either directly or by implication to all entities seeking to provide a noncompetitive telephone service to the public, irrespective of whether the entity constructs any facilities or employs equipment duplicating equipment a local exchange telephone company already has in place. Minn. Stat. 0LQQ Stat. 237.64, subd. 1 (1990).

19. Basic local exchange access service is a noncompetitive telephone service. Minn. Stat. 237.57, subd. 6 (1990).

20. CENTRON service is defined as a service subject to emerging competition by Minn. Stat. sec. 237.59, subd. 1(5) (1990). A service subject to emerging competition is defined as a competitive service by Minn. Stat. sec. 237.57, subd. 2 (1990). Minn. Stat. 237.64, subd. 1 (1990), which applies

Minn. Stat. 237.16 (1990), to any offering to the public of a noncompetitive telephone service, has no application to CENTRON resale.

21. The provision of CENTRON service to the public by a CENTRON reseller does not duplicate any physical facilities of the LEC or require the installation of any telephone equipment by the reseller. ETI Ex. 18, p. 2; ETI Ex. 18, pp. 11-12; DPS Ex. 222, p. 5.

22. There are circumstances in which PBX resale could entail duplication of the facilities of a LEC. One example is when several unrelated buildings

are interconnected to a single PBX switch with facilities that duplicate the local telephone network. DPS Ex. 222, p. 5. Resale of PBX service, however, would always require the installation by the reseller of a PBX switch. In a resale context, apart from Private Shared Telecommunications Services (PSTS) such a switch would constitute equipment installed by the reseller to provide a telephone service within the meaning of Minn. Stat. sec. 237.16, subd. 1 (1990). Airport Systems v. NWB, supra. Although a LEC does not dedicate facilities or equipment to provide CENTRON service, the service cannot be provided without the use of the physical plant of the LEC, including station lines, cable pairs and the central office switch. USWC Ex. 75, pp. 13-14, USWC Ex. 77, P. 5.

13. Minn. stat. sec. 237.16, subd. 1 (1990), does not require that the equipment installed be the property of the reseller, as long as equipment installed by a telephone company is used to provide the service. Moreover, Minn. Stat. 237.16, subd. 4 (1990), prohibits a telephone company from obtaining either direct or indirect control of a telephone line, plant or system without obtaining a certificate after demonstrating the requirements of the public convenience and necessity.

24. A CENTRON reseller has indirect control over the telephone lines of the LEC providing service to the resellers' customers.

25. As a consequence of Findings 22-24, supra, even a nonfacilities-based reseller of CENTRON service is required to obtain a territorial certificate of authority after demonstrating that such resale is required by the present or future public convenience and necessity. Hearing Order, p. 4; HATS Order, pp. 12-13.

26. Apart from Minn. Stat. 237.16 (1990), the Commission has general authority over the telephone service provided by telephone companies and the reasonableness of attendant rates. Further, Minn. Stat. 237.081 (1990) authorizes the Commission to investigate the provision of telephone service and make such order; as are just and reasonable. See also, Minn. Stat. 237.06 (1990).

27. In exercising its general oversight over telephone companies, the Commission must determine and act in accordance with the requirements of the public interest.

28. A determination of the requirements of the public interest or the reasonableness of a telephone company service under Minn. Stat. 237.06, 237.081 (1990), involves the same considerations as the multifactor test of public convenience and necessity enunciated in Findings 29-32, infra, at least

when the provision of a new service is authorized. In re Application for Authority to Provide Alternative Operator Services in Minnesota, P-999/CI-88-917, November 19, 1991, (AOS Older), pp. 5, 15-16.

29. When determining the requirements of the public convenience and necessity in the context of authorizing an additional service provider, the Commission acts in a quasi-legislative capacity. Dahlen Transport v. Hahne, 112 N.W.2d 630 (Minn. 1962); Petition of Murphy Motor Freight Lines, 428 N.W.2d 467 (Minn. Cf. App. 1988); Arvig Tel. Co. v. Northwestern Bell Tel.

Co., 270 N.W.2d 111 (Minn. 1978); Petition of New Ulm Telecom, Inc., 399 N.W.2d 111 (Minn. Ct. App. 1987).

30. In the circumstances described in Finding 29, *supra*, consideration must be given to a wide range of factors, including both cost and noncost considerations- *Dahlen Transport v. Hahne*, 112 N.W.2d 630 (Minn. 1962).

31 In the circumstances described in Finding 29, *supra*, public benefit must be weighed against public detriment, with consideration given to all appropriate factors. *Arvig Telephone Co. v. Northwestern Bell Telephone Co.*, 270 N.W.2d 111, 114-15 (Minn. 1978); *Petition of American Freight Systems, Inc.*, 380 N.W.2d 192, 194 (Minn. App. 1986); *Metro Fiber Systems*, Docket No. P-495/FM-89-80, June 16, 1989 (Minn. PUC); *New Ulm Freightlines, Inc.*, RRCC 649/A-75-24, April 24, 1979 (Minn. PUC). An additional service provider should be authorized if it is more probable than not that a grant of the authority requested will result in a net benefit to ratepayers generally. *See Line Ry Co. v. United States*, 271 F. Supp. 869, 873, fn. 2 (D.C. Minn. 1967); *Arvig Telephone Co. v. Northwestern Bell Telephone Co.*, 270 N.W.2d 111, 117 (Minn. 1978); *Browning v. Hood*, 99 Idaho 174, 579 P.2d 120, 126 (1978); *MFS Order*.

32. At least seven factors should be considered when public benefit and detriment are weighed to determine whether a proposed new service meets the public convenience and necessity requirement of Minn. Stat. 237.16 (1990):

1. The public need for the proposed service;
2. The ability of the existing providers to satisfy the demonstrated public need;
3. The impact of granting additional market entry on existing providers;
4. The degree to which additional market entry will advance public policy objectives;
5. The level of desirable competition;
6. The impact upon ratepayers generally of authorizing a duplicate service provider;
7. The ability of an applicant to provide the proposed service.

MIEAC Order, pp. 8-9, *Arvig*, *supra*, 270 N.W.2d at 114-15; *Petition of American Freight Systems, Inc.*, 380 N.W.2d 192, 194 (Minn. App. 1986); *MFS Order*; *New Ulm Freightlines, Inc.*, RRCC 649/A-75-24, April 24, 1979 (Minn. PUC).

33. In the circumstances described in Finding 29, *supra*, there need not

he a demonstration that the existing service is inadequate. Rock Island Motor Transit Co. v. Murphy Motor Freight Lines, Inc., 40 N.W.2d 896 (Minn. 1949); Dahlen Transport v. Hahne, 112 N.H. 630 (Minn. 1962); Petition of New Ulm Telecom, Inc., 399 N.W.2d III (Minn. Cf. App. 1987). The adequacy of existing service is, however, a relevant consideration.

34. In the circumstances described in Finding 29, supra, the ability of an existing provider to expand its services to fulfill stated needs is not in

Itself a sufficient basis in deny a finding of public convenience and necessity to the provider of the proposed service. Dahlen Transport v. Hahne, TIP N.W.2d 630, 635 (Minn. 1962).

35. The word "requires" as contained in Minn. Stat. sec 237.16, subd. 1, subd. 4 (1990), does not mean absolute indispensability. Rather, it reflects the propriety of the action and its consistency with the public interest. Chicago & NWR Co. v. Verschlingel, 197 Minn. 580, 268 N.W. 2-(1936); Dahlen transport, Inc. v. Hahne, 261 Minn. 218, 112 N.W.2d 630 (1962); MIEAC Order, P. R.

36. The Commission and the Minnesota Legislature have not adopted a general policy that promoting competition in the provision of local exchange service is socially desirable. When alternative providers of such service have been authorized by the Commission in individual cases, public benefit and detriment have been specifically considered. MFS Order, supra; Airport Systems, Ing. v. NWB, supra; Duddy Limited Partnership, P-467/NA-86-141, April 29, 1987, p. 2; Application to Resell_Telephone service, P-449/M-84-169, October 10, 1990, p. 2.

37. The Minnesota Commission has never authorized the resale of a flat rate telephone service. Airport_systems Order, pp. 10-11; WATS-Order, pp. 8-9. The reason articulated for the policy is that costs associated with the provision of telephone service generally rise with usage and a flat rate service is not priced to recognize the costs associated with varying levels of usage .

38. In considering the benefits associated with authorizing an additional service provider, it may be appropriate to consider proposed services to be rendered in addition to the specific regulated service. Such proposed additional services may be considered if they are not otherwise generally available and are sufficiently related to the regulated service provided. Griffin Mobile Homes Transporting Co. Contract Carrier Application, 91 MCC 801, 103 MCC 482 (1967), aff'd sub, nom, National Trailer Convoy, Inc. v. U.S., 293 F. Supp. 630 (N.D. Okla. 1968), aff'd, 394 U.S. 849 (1969); Hintz Common Carrier Application, 107 MCC 348 (1968); Martjn_Trajler-toters_Inc. Common Carrier Application, III MCC 843 (1970); Schirmer Transportatjon Co., 76 MCC 293 (1958); Baggett TransportAtion Co. v. U.S., 231 F. Supp. 905 (N.D. Ala. 1964); Farm Supply Distributors, Inc. v. Utilities Comm'n, 8 Wash.

App. 448, 506 P.2d 1306, 1312-13 (1973).

39. The Commission has never authorized the resale of CENTRON service or nnn-PSTS PBX service. Neither service may legally be provided without Commission approval-

40. The proponent of an additional local telephone service bears the burden of establishing the net benefits of the proposed service by a preponderance of the evidence. Minn. Rules pt. 1400.7300, subp. 5 (1991). The same burden is present in a generic proceeding. A new service should not be authorized unless the Commission, after considering all relevant factors, determines that its provision is more probably than not required by the present or future public convenience and necessity.

41. Any Finding or Conclusion made by the Administrative Law Judge or Commission must be based on evidence of record, matters properly the subject

of administrative notice or the specialized Knowledge and expertise of the Commission. Minn. stat. sec 14.60, subd. 2 (1990); Minn. Stat. 14.60, subd. 4 (1990); Minn. stat. sec. 14.62, subd. 1 (1990); Minn. Rules pt. 1400.7300, subp. 2 (1991) Minn. Rule; pt. 1400.7300, subp. 4 (1991); Minn. Rules pt. 1400.8100, subp. 1,) (1991); Minn. Rules pt. 1400.8200 (1991).

DISCUSSION

the Hearing Order in this case required the parties to consider, initially, whether the resale of CENTRON and PBX service is in the public interest. This proceeding is not one to grant a certificate of territorial authority to a telephone company to provide additional telephone service under Minn. Stat. sec. 237.16, subd. 1 (1990), or Minn. Stat. 237.16, subd. 4 (1990). Under a variety of statutes, it is the responsibility of the Commission to regulate the provision of telephone service by telephone companies to ensure that adequate service is provided to the public at reasonable rates. Minn. Stat. 237.06 (1991); Minn. Stat. 237.16 (1990); Minn. stat. Minn. Stat. 237.02 (1990); Minn. Stat. 237.64, subd, 1 (1990).

in determining the requirements of the public interest, the Administrative Law Judge believes that the appropriate legal standard has been developed by the Commission under Minn. Stat. 237.16 (1990), in a number of cases. See, MIEAC Order, p. 8; AOS Order, pp. 15-16; Airport System, Order, pp. 2-6; HATS Order, p. II.

The most recent and appropriate restatement of the multifactor test is contained in the Commission's Order in MIEAC, as quoted in Finding 32, supra. All of the parties, except FTI, analyzed the evidence in terms of the multifactor test stated in the MIEAC Order.

Eli argues that this case is governed by Minn. Stat. 237.16, subd. 5 (1990). It reasons that it obtained authority to resell CENTRON service in the certificate obtained from the Commission in 1984. In the Matter of an Application to Resell Telephone Service in the State of Minnesota, Docket No. P-449/M-84-169, May 1, 1984, Appendix to Initial Brief of Enhanced TeleManagement, Inc., tab 2. If this proceeding had the effect of revoking ETI's certificate, it is reasoned, that could only be accomplished if the company provided inadequate telephone service.

In its Hearing Order, however, the Commission did not assign for consideration ETI's current status as a CENTRON reseller. Moreover, the

Commission determined in 1990 that the 1984 ETI certificate did not include authority to resell local telephone service. In the Matter of an Application to Resell Telephone Service in the State of Minnesota, P-449/M-84-169, October 10, 1990. In that docket, ETI had the ability to present its interpretation of the scope of its certificate and the existence of an estoppel against the Commission denying it had the asserted authority. The Commission rejected, categorically, both of ETI's arguments, finding that it had never determined whether the resale of local service is in the public interest. In its October 10, 1990 Order, the Commission granted ETI temporary authority to resell local telephone service pending the outcome of this generic proceeding. Presumably, the Commission will rely on its Findings with respect to whether the resale of PBX and CENTRON service is generally in the public interest to consider ETI's specific factual situation. Clearly, all parties to this

proceeding would be bound by res judicata or collateral estoppel in the specific FTI docket as regards the Commission's decision in this docket about the public interest of PBX and CENTRON resale.

Even though the commission will doubtless implement its public interest determination in this proceeding in the ETI docket, that does not change the legal test the Administrative Law Judge must use to determine the requirements

of the public convenience and necessity or the public interest. The Administrative law Judge must accept the Commission's determination in the ETI

docket that the Company was not given authority to resell local service in 1984 and that the PUC is not estopped from denying that ETI lacks such authority. Certainly, FTI will have the ability to appeal any final decision

by the Commission in its company-specific docket to the Court of Appeals. Minn. stat. sec 14.63, 14.68 (1990).

The Administrative Law Judge, therefore, rejects ETI's assertion that the

appropriate legal standard in this proceeding is that contained in Minn. Stat.

sec. 237.16, subd. 5 (1990). On the same basis, the Administrative Law Judge will not comment on the Commission's conclusions in the ETI docket regarding estoppel. Such comment has not been requested by the PUC and it would serve no function.

U.S. West argues that the public convenience and necessity standard stated

in Minn. Stat. 237.16, subd. 1 (1990), is not the sole consideration. It argues that Minn. stat. 237.06 (1990), provides a second standard which must

be met after the requirements of the public convenience and necessity are determined. It relies upon the decision of the Commission in the AOS_Order, p. 15. The Administrative law Judge does not believe that the AOS decision sets out two distinct legal tests when defining the public convenience and necessity or the public interest. In the AOS Order, the Commission was dealing with three different types of providers: LECs and ILECs who have franchised territories and provide operator services to transient and nontransient customers interexchange carriers; and pure AOS companies. The Commission was not concerned with the prospective grant of additional certificates of territorial authority in the AOS case. It was merely stating limitations which would apply to the three various types of companies providing AOS service. Under those circumstances, the Commission's reference to Minn. Stat, 237.06 (1990), is both understandable and necessary. In this

docket, however, no provider currently has a certificate of territorial authority and the prospective resellers are telephone companies. Hence, the appropriate legal standard is that contained in Minn. Stat. 237.16, subd. 1

The terms and conditions under which service would be provided and the reasonableness of rates charged, however, are certainly factors subsumed within the multifactor test that go to the nature and extent of the benefit that would be provided by a PBX or CENTRON reseller. The ultimate result, probably, is exactly the same. The Commission, in determining the

requirements of the public interest or the public convenience and necessity, must balance all relevant factors and act in the public interest.

The Commission has determined that local resellers are telephone companies, as defined in Minn. Stat. 237.01, subd. 2 (1990). As such, the Commission apparently assumes that any provision of local exchange service will be governed by Minn. Stat. 237.16 (1990). As recognized by several

parties, however, Minn. stat. sec. 237.16 (1990), has been characterized by the Minnesota court as an antiduplication statute. *Arvig Telephone Company, v. Northwestern Bell Telephone Company*, 270 N.W.2d 111, 116 (Minn. 1978); *Tristate Telephone & Telegraph Co. v. Intercounty Telephone Co.*, 1 N.W.2d 853 (Minn 1942). As noted in the Findings, a PBX reseller dedicates facilities to provide the local exchange service and, in the case of non-PSTS PBX resale, would have to construct interconnections duplicating a portion of the LEC facilities. DPS Ex. 222, p. 5. CENTRON resale, on the other hand, does not require the dedication of equipment by the reseller to provide the resold service to the public. Under those circumstances, it could be argued that Minn. stat. sec. 237.16 (1990), has no application to this proceeding.

The Administrative Law Judge believes, however, that the Commission has jurisdiction to require a certificate of territorial authority of a nonfacilities-based telephone company that resells local exchange service. Minn. stat. 237.16, subd. 1 (1990), requires a certificate of authority when lines or equipment are installed to provide telephone service. It could well be argued that when one telephone company provides service through the lines of another telephone company, a certificate would be required. Further, Minn. stat. 237.16, subd. 4 (1990), requires a certificate when one company operates or obtains indirect control over any telephone "line, plant or system". This language is broad enough to require a certificate of authority of a nonfacilities-based reseller.

If the Commission believes it does not have jurisdiction to require CENTRON resellers to obtain a certificate under Minn. Stat. 237.16, subd. 1 (1990), because no physical facilities of the reseller duplicate LEC facilities, direct regulatory oversight is still possible.

Minn. Stat. 237.06, 237.081 (1990), give the Commission general oversight over the service provided by and reasonableness of rates charged by telephone companies in the provision of a telephone service. If the Commission applied those sections to CENTRON resellers, it could not require certificates of territorial authority. It could, however, set standards for the provision of the telephone service with the exact same effect. A reseller of non-PSTS PBX service and a reseller of CENTRON service are telephone companies. Minn. Stat. 237.081, subd. 4, (1990), authorizes the Commission after investigation and hearing to enter an Order with respect to a telephone company act or service that is just and reasonable. As noted in the Findings, as regards resale, the same multifactor weighing of benefit and detriment is involved as would be true under Minn. Stat. 237.16 (1990), and the

Commission could impose reasonable conditions on the provision of the service,
if authorized.

Finally, if the Commission believed that it had no direct regulatory authority over nonfacilities-based CENTRON resellers, even under Minn. Stat. sec. 237.06, 237.081 (1990), it still has authority over the tariffs of LECs providing service. Under Minn. Stat. 237.06, 237.081 (1990), it could cause to be inserted in the appropriate LEC tariffs language limiting the circumstances under which service would be provided to someone who resells that particular service and the qualifications of resellers.

ETI, the only CENTRON reseller who testified in this proceeding, offers services to its customers in addition to the resold USWC CENTRON service. ETI it is argued, provides services to its customers in addition to the

resold USWC CENTRON service which make the company the customer's telecommunications consultant. The services ETI provides in addition to the resold CENTRON service are stated in Finding 115, infra. ETI argues that these ancillary, auxiliary or incidental services must be considered in analyzing the public benefit of CENTRON resale, at least as practiced by ETI. "AK and DPS, without specifically considering the issue, assume that the benefits associated with incidental services should be considered. U.S. West, however, argue; without citing appropriate authority, that only the benefit of the resold CENTRON service can be considered. In its view, the auxiliary services provided by ETI are irrelevant.

Certainly, resale of CENTRON service could be accomplished without providing incidental, auxiliary or supplemental services. Such a "pure" resale could, conceivably, be determined to be in the public interest. If pure resale of CENTRON services were determined not to be in the public interest, one would have to consider whether the offering of auxiliary or incidental services could meet the requirements of the public convenience and necessity.

As stated in Finding 38, supra, transportation law provides relevant precedent in determining whether incidental services are properly considered in determining the requirements of public convenience and necessity. To be considered, such incidental or auxiliary services must first not be generally available from other sources on a meaningful basis and such services must have a sufficiently close relationship to the regulated service provided. This test is, at bottom, one of common sense. If, for example, a reseller offered to provide janitorial services to its customers or to make health insurance available to employees of its clients, one could not seriously argue that these "benefits" should be determined in considering the requirements of the public convenience and necessity. There really is no relationship between the benefits and the regulated service and there are other readily obtainable sources of the auxiliary or incidental services. The Minnesota Transportation Regulation Board has recently applied the test stated in Finding 38, supra, in two separate proceedings. *Petition of American Security Corp.*, RRC 735/A-90-39, May 31, 1991; *Riteway Mobile Home Repair*, IRCC 65503/A-90-11, December 19, 1990.

The Administrative Law Judge, therefore, rejects the assertion by U. S. West that under no circumstances can such auxiliary services be considered. The general availability of such auxiliary services and their relationship to the regulated service will be considered when the benefits provided by CENTRON resellers are later discussed. See, Findings 115-126, infra.

III. SCOPE OF PROCEEDINGS AND FINDINGS

42. In its Hearing Order, the Commission stated an intention that this proceeding be a generic inquiry into CENTRON/CENTREX resale and PBX resale. Hearing Order, p. 5. Private Shared Telecommunications Services (PSTS),

authorized by Minn. Stat. sec. 237.68 (1990), were specifically determined to be outside of the scope of the proceeding. Hearing Order, p. 5.

43. Enactment of Minn. Laws 1991 c. 154 eliminated from consideration in this proceeding the provision of local noncoin telephone services to transient end-users by entities such as hotels, motels and restaurants.

44. Although not required to do so by the Hearing Order, U.S. West provided cost and lost contribution data for a category of users termed "Small Sharers" USWC Ex. 130 (Prop), Attachment 1, p. 1: USWC Ex. 100 (Prop), pp. 5 A

45. U.S. West defined a "Small Sharer" as two small businesses working at one location with one flat rate business line and one joint user listing. USWC f.. 100 (Prnp), p, 6.

46. On oral motion made by DAG, the Administrative Law Judge excluded from consideration in this proceeding the impact of Small Sharers, since their inclusion was not noticed in the Hearing Order.

47. There is insufficient evidence in the record to justify a determination that the resale of CENTREX/CENTRON service or the resale of non-PSTS PBX services in ILEC exchanges is in the public interest.

48. There is no evidence in the record that would justify a determination that the resale of non-PSTS PBX service is in the public interest, even in USWC exchanges.

49. Absent a specific authorization by the Commission, non-PSTS PBX resale and CENTREX/CFNTRON resale are prohibited. Hearing_Order, pp. 3-4; In re Resale of Telephone Service, P-449/M-84-169, October 10, 1990, p. 2.

50. Although ETI is the only CENTRON reseller who participated in this proceeding, ETI is, by far, the dominant reseller of CENTRON service, accounting for at least 90% of the lines sold.

51. Although a significant portion of the record in this proceeding is specific to ETI and the services it offers, generic findings can be made about CENTRON resellers who offer enhanced or auxiliary services to customers with the resold CENTRON product.

52. It is also appropriate to make generic findings concerning "pure" resellers of CENTRON services.

DISCUSSION

In its Hearing Order, the Commission stated it desired this to be a generic proceeding relating to the resale of PBX and CENTRON service. As noted in the Findings, however, the Legislature has specifically authorized PSTS PBX resale. Minn. Stat. , 237.68 (1990). Thus, it is not open to the Commission to determine whether PSTS PBX resale is or is not in the public interest. In recognition of this fact, the Commission specifically excluded PSTS PBX resale from consideration in this proceeding. Pricing of PSTS services is being considered by the Commission in rulemaking docket 357.

Further, PBX resale to transient end-users in hotel, motel and restaurant situations has already been specifically authorized by Laws of Minn. 1991, v. 154. Hence, the only species of PBX resale to be considered in this proceeding is non PSTS PBX service not within Minn. Laws 1991, c. 154.

The Department of Public Service attempted to identify the PBX resale that is still within this proceeding. This service would most probably entail

the interconnection of unrelated buildings to a single PBX switch. DPS Ex. 223 (Prop), p. 5. There is no evidence in the record that this type of resale is currently taking place. DPS Ex. 223 (Prop), p. 5. In its Initial Brief, U.S. West argues that it has demonstrated the revenue loss to U.S. West from PBX resale. It states a number of reasons why PBX resale is potentially more detrimental to USWC than CENTRON resale. Initial Brief of U.S. West Communications, Inc., December 10, 1991, pp. 42-44. The data U.S. West relies upon, however, is made up primarily of PSTS applications. USWC Ex. 132, Attachment 2, p. 2; ETI Ex. 88. Since the Legislature has determined that PSTS PBX resale is in the public interest, the data regarding revenue loss presented by U.S. West may not serve as a basis for prohibiting non-PSTS applications of PBX resale, unless one concludes that the revenue losses would be analogous in non-PSTS PBX resale.

Of additional concern is the fact that no non-PSTS PBX reseller provided testimony, although such testimony was specifically solicited. The most plausible reason for the lack of testimony is that most PBX resellers are PSTS providers. The level of non-PSTS PBX resale, if any, occurring is unknown. The lack of testimony about the benefits of such service prevents an application of the multifactor test, weighing benefit against detriment. Since the current state of the law is that non-PSTS PBX resale is prohibited unless specifically authorized, the record of this proceeding would not support a change from the status quo. The findings of the Administrative Law Judge and the PUC must be based on record evidence, facts of which administrative notice may be taken and the expertise of the agency. See, Finding 41, supra.

Although PSTS pricing is being considered in a separate rulemaking proceeding and the record evidence regarding non-PSTS PBX resale is scant, a number of witnesses testified that the services should be treated consistently. USWC Ex. 171 (Prop), p. 16; OAG Ex. 208 (Prop), pp. 5, 12. These services are at least potentially competitors. If the Commission gives an advantage to a competing service, the disadvantaged service will be severely handicapped in competing.

The testimony in this proceeding relating to CENTRON resale was specific to U.S. West exchanges. ETI, the only CENTRON reseller offering testimony, does not operate in ILEC exchanges. All of the data regarding cost resulting from the resale of local exchange service was presented by U.S. West and was entirely specific to its service territory. Moreover, cost and rate design

characteristics vary between ILECs and U.S. West and even vary significantly between individual ILECS. Until a reseller proposes to provide service in an ILEC service area, the data necessary for a determination of the public interest does not exist. Some of the information required includes: the ILEC cost of service that is to be resold; rates to be charged by a local reseller; and the identity of potential resale customers. An additional difference between USWC and ILECS, noted by MIC in its Initial Brief, December 10, 1991, is that ILECs are not subject to the restrictions U.S. West experiences as a result of the Modified Final Judgment (MFJ). Many ILECs do offer the Comprehensive telecommunications services to small businesses which ETI offers. MIC Ex. 113, p. 7. The Administrative Law Judge believes it inappropriate to attempt global findings relating to the impact of local resale in ILEC exchanges. Because non-PSTS PBX resale and the resale of CENTRFX/CENTRON services in ILEC exchanges is currently prohibited, the effect of excluding ILEC exchanges from the public interest determination made in

this proceeding is to continue the existing prohibition of resale in ILEC exchanges.

The Office of the Attorney General argues that no generic public interest determination about CENTRON resale may be made in this proceeding because the only CENTRON reseller offering testimony was ETI. In its view, the record is too fact specific about ETI and its business practices for general application.

Initial Brief of the Office of the Attorney General, December 10, 1991, p.

14. While the Department of Public Service believes that making generic findings relating to CENTRON resale may be appropriate, it would not oppose applying this proceeding only to ETI. U.S. West argues that generic findings are entirely appropriate. Finally, ETI does not contend that all forms of CENTREX/CENTRON resale are in the public interest. It states only that the type of CENTRON resale it practices, with auxiliary services provided, is in the public interest.

The record identified at least three resellers of CENTRON service ETI Ex. 90 (Prop); USWC Ex. 130, Attachment 4. There is no evidence about the business practices of CENTRON resellers other than ETI. The Administrative Law Judge believes it both appropriate and possible to make generic findings about CENTRON resale in USWC exchanges based on the record of this proceeding. There are, potentially, two distinct types of CENTRON resale: a

" pure" resale of the CENTRON product, without incidental or auxiliary services; and CENTRON resale coupled with the availability of incidental or auxiliary services. If, for example, it is found that the type of service provided by ETI, with incidental or auxiliary services added, is not in the public interest, it would follow that the pure resale of CENTRON services, with a price advantage but not additional services, would likewise be contrary to the public interest. If the addition of auxiliary services, with or without some pricing relief, is in the public interest, whether pure resale of CENTRON service would also be in the public interest would remain to be determined. Since no pure reseller of CENTRON services provided testimony, the Administrative Law Judge will be limited by the record in making positive findings about the propriety of such resale.

TV. CENTRON AND PBX-RESALE -- DEFINITIONS AND-SERVICE CHARACTERISTICS

A. Definitions and Scope

53. Local resellers are entities which purchase a quantity of local exchange services from a LEC as a single large volume user and then solicit and sell those services to a diverse and legally unrelated set of end-users.

USWC Ex. 167 (Prop), p. 6; DPS Ex. 223 (Prop), pp. 2-3; OAG Ex. 206 (Prop),

p. 2. Resellers generally, if not always, operate on a for-profit basis. USWC Ex. 167 (Prop), p. 7; 49 Tr. 77, 49 Tr. 80-81, 49 Tr. 83. The reseller

bill; and collects from the ultimate end user of the telephone service. DPS

Ex. 223 (Prop), p. 2; OAG Ex. 206 (Prop), p. 2; USWC Ex. 167 (Prop), p. 6.

54. Resale of local exchange service includes, among other services:

CENTRON/CENIREX resale; PBX resale, which includes Private Shared Tenant Service (PSTS) and non-PSTS applications; Customer Owned Coin Operated telephones (COCOTs); and PBX resale involving transient customers. DPS Ex. 223 (Prop), pp. 2-5; OAG Ex. 206 (Prop), pp. 2-4.

55. The resale of local service through COCOTs was approved by the Commission in *Airport Systems, Inc. v. NWB*, P-421/C-82-4645, June 29, 1984.

56. PBX service is provided through an assembly of privately-owned equipment that allows individuals with dial access to communicate to and from the public switch network, utilizing the switching capacity and abilities of a private switching system typically located on a customer's premises. USWC Ex. 75, p. 5.

57. Private shared telecommunications Services (PSTS) is a statutorily authorized form of PBX resale. 54 Tr. 54-56. Minn. Stat. 237.68, subd. 1 (1990) defines PSTS as:

... The provision of telephone services and equipment within a user group located in discrete private premises, in building complexes, campuses, or high-rise buildings, by a commercial shared service provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to long-distance telephone companies.

PSTS is outside the scope of this proceeding. Hearing Order, p. 5. The Commission has determined that PSTS providers are telephone companies, since they provide telephone service to the public. Order, P-999/R-88-357, December 19, 1989, p. 3.

58. To qualify as PSTS PBX resale, the service must be provided through "privately owned customer premises equipment and associated data processing and information management services" within discrete customer premises located in a single building or building campus situation. The only existing technology that satisfies the statutory definition is a PBX switch. OAG Ex. 206 (Prop), pp. 2-3. PSTS providers cannot aggregate traffic from outside the specific building or complex served by the PSTS provider on the same PBX switch. 54 Tr. 57. PSTS providers must have at least one PBX switch for each building or discrete private premises being served.

59. By definition, CENTRON resale is not a service authorized by Minn. Stat. 237.68 (1990), because the switching equipment is owned by the LEC rather than a separate provider and it is not located on the customer premises.

60. PBX resale, which is not PSTS, can be divided into resale to nontransient customers and resale to transient customers, including guests at hotels and motels. DPS Ex. 218 (Prop), p. 11.

61. Non-PSTS PBX resale to transient customers such as hotel and motel guests was specifically authorized by Minn. Laws of 1991, c. 154.

62, As a consequence of Findings 56-61, supra, the PBX resale at issue in this proceeding is the non-PSTS, nontransient location resale of local telephone service through the use of a PBX, as defined in Finding 56, supra. Hereinafter, the term "PBX resale", when not qualified by the context, is employed in this restricted sense.

63- CENTRON resale is the resale to the public of local access service using LEC central-office based switching equipment. USWC Ex. 75, pp. 18-19; DPS Ex. 223 (Prop), pp. 4-5. This type of resale does not involve facilities ownership by the reseller. All facilities and most services are provided by the LEC. DPS Ex. 223 (Prop), p. 5. it differs from nontransient, non-PSTS PBX in that the CENTRON equipment is all owned by the LEC and located on the LEC's premises, whereas the PBX switch is owned by the reseller and located on private premises.

B. PBX Technology

64. A PBX is an assembly of equipment which allows individuals within a community of users to communicate internally or with the public switched network by utilizing the switching capacity of a private switching system, typically located on the end user's premises. USWC Ex. 75, p. 5.

65. Connections to the public switched network are made by the PBX equipment in response to user dialing action. When an appropriate access code is dialed, the PBX station can be connected to a PBX trunk which in turn connects to the LEC central office, thereby gaining access to the public switched network as indicated by a second dial tone. Subsequent dialing of the seven or ten digit number of the called party will result in the completion of the call. USWC Ex. 75, p. 5.

66. With DID service. an incoming call can be completed to a PBX station without attendant assistance. Outgoing calls can be made by dialing through the switching equipment or by placing them through an attendant position. With both DID and non-DID PBX trunks, incoming and outgoing calls are routed over trunks to and from the public switched network much like calls to and from a CENTRON system are routed through NARs. USWC Ex. 75, p. 6.

67. With PBX, the number of trunks limits or concentrates access to and from the public switched network. Greater efficiencies are gained with a larger number of trunks. USWC Ex. 75, p. 7.

68. Stand-alone PBX systems have generally higher station line thresholds than direct CENTRON service in order to justify economically the purchase of the PBX system. USWC Ex. 169, p. 9. USWC estimated the thresholds for stand-alone PBX systems to be approximately 50 station lines per location, with the more common PBX applications at the 75-100 station line levels. USWC Ex. 168, p. 9. Other estimates of the minimum number of lines necessary, particularly in a PSTS context, would require 150-200 lines. 54 Tr. 91: 50 Tr. 72-77. 39 Tr. 51-52. A PBX system may be prohibitively expensive for many small businesses. USWC Ex. 168, p. 9.

69. Every USWC central office switch in Minnesota has the ability to

provide service to basic PBX systems. USWC Ex. 75, p. 8. DID service may be furnished in USWC locations served by analog or digital electronic central office switches. USWC Ex. 75, p. 8.

10. Because PBXs concentrate traffic over the PBX trunks, fewer trunks are required than if a customer ran a IFB line to each of his telephone sets. USWC Ex. 75, p. 4. As a result of the fewer trunks and, therefore, loops running between USWC's central office and the customer's premises, the cost to USWC to provide service to this customer declines in comparison to IFB

service. The cost reductions resulting to USWC to serve PBX/PSTS resellers is shown on USWC Ex. 100, Sch. 2, p. 1. The major cost savings are a result of reduced loop and drop costs.

f. PBX Resale

71. A PBX reseller establishes a PBX system in a specific central office and Subscribes to a quantity of PBX trunks from the LEC. The trunks typically will be DID trunks in order to provide each end user with its own distinct telephone number. All PBX station lines must physically connect to the PBX, and the reseller will provide service by selling PBX station line service to end user locations. A PBX reseller can serve end users located in the same building, on the same property, or in other distant locations using a form of private line service, USWC Ex. 75, pp. 16-17.

72. Two or more separate buildings that are not part of an office complex or campus may be interconnected so that a single PBX could be used to serve access lines aggregated from these buildings. This non-PSTS application would fall outside the scope of the PSTS statute. DPS Ex. 223 (Prop), p. 5.

73. There is no evidence that non-PSTS PBX resale is occurring in Minnesota. USWC Ex. 75, pp. 19-20; DPS Ex. 223 (Prop), p. 23,

74. A number of probable PSTS resellers were identified in the record. ETI Ex. 86; ETI Ex. 87; ETI Ex. 88; ETI Ex. 89. Although there was an initial concern by U.S. West that PSTS PBX resale would proliferate to the point of becoming a significant market factor, the growth in PSTS PBX resale has been severely limited. U.S. West Ex. 228. The revenue growth over the period August 1990 through March 1991 is zero percent. USWC Ex. 228. A U.S. West survey of identified PBX resellers, including PSTS applications, showed only

Prop resold PBX trunks, serving an estimated (()) prop station lines as of January 1, 1991. USWC Ex. 132 (Prop), Attachment G, p. I of 1.

75. CENTRON and PBX resellers are subject to the same charges as other USWC customers for similar services. In addition, USWC applies a joint user charge when end users receive service through a CENTRON or PBX reseller. The joint user charge is applied to each end user entity for its initial listing

in the telephone directory. USWC Ex. 85, p. 9. Use of the joint user tariff provides a mechanism for identifying resellers because without the joint user listing charge, end users taking service from resellers would not be listed in the USWC telephone directory. USWC Ex. 168, p. 13.

D. CENTRON Technology

76. CENTRON is a USWC business telecommunication service that allows individuals within a community of users to communicate internally or with the public switched network by utilizing the switching capacity of the electronic central office switch owned, maintained and managed by a LEC. A local central office switch providing CENTRON service also typically provides local business and residence exchange service in the form of single business and residential lines and PBX trunks. USWC Ex. 75, p. 9.

77. CENTREX is a generic term for central office based telecommunications systems. U.S. West's CENTRON service is one such system. CENTREX service is provided by telephone companies under a number of different names. In

addition, U.S. West provides a central-office based product under the tradename of CENTREX. In Minnesota, U.S. West has phased out its CENTREX service except to a limited number of customers, including the State of Minnesota, who receive it as a grandfathered service provided under an arrangement approved by the Commission. ETI Ex. 18, pp. 3-4.

73. U.S. West's CENTRON and CENTREX services are virtually identical except that CENTRON requires Network Access Registers (NARs) which serve as a restriction on the number of outgoing and incoming calls which can be made. See, Findings 81-82, infra. ETI Ex. 18, pp. 3-4. As used in the remainder of this Report, the term "CENTRON" will be used to refer to the USWC central office-based product that provides service using NARs.

79. Direct Inward Dialing (DID) is an inherent feature of CENTRON service, allowing all incoming calls from the public switched network to reach specific dialed CENTRON station lines without the assistance of an attendant. USWC Ex. 75, p. 15.

80. There is no hardware or equipment dedicated by the LEC to providing CENTRON service. CENTRON service utilizes a portion of the switching, memory and call processing capacity of the central office switch concurrently with all other types of call traffic handled by the central office switch. USWC Ex. 77, p. 5.

81. The concentration of CENTRON calls and access to the public switch network is facilitated by means of software-defined counters referred to as Network Access Registers (NARs). NARs provide the capability to limit a CENTRON customer's calling capacity to a numerical quantity of simultaneous calls as specified and ordered by the customer. Quantities of NARs may be separately assigned to limit quantities of incoming, outgoing or two-way exchange access calls. USWC Ex. 75, p. 10.

82. Operationally, the NAR is a portion of the software memory assigned to a software operating routine that keeps track of the number of incoming and/or outgoing calls that a CENTRON customer has in progress at any given point in time. The memory area is updated each time that an incoming call arrives to a customer, and is also updated each time that a CENTRON user disconnects from an incoming call, so that a current count of incoming calls in progress is constantly maintained. For example, if a customer subscribes to ten incoming NARs and ten incoming calls are in progress, subsequent incoming call attempts will be given a busy tone. In a like manner, outgoing call attempts exceeding the outgoing NAR quantity will be denied the ability to originate an outgoing call. USWC Ex. 75, pp. 10-11.

83. A CENTRON customer typically subscribes to a specific number of CENTRON station lines and associated telephone numbers that are terminated on

the line side of the central office switch and are extended via paired copper conductors, commonly referred to as cable pairs, to a demarcation point or termination field at the customer's premise. The CENTRON station lines access to and from the public switched network is controlled through the quantity of NARs purchased by the customer. USWC Ex. 75, p. 13. The same cable pair will allow CENTRON service, PBX trunk service or basic business service. USWC Ex. 75, p. 14: 4 Tr. 60.

84. There are literally hundreds of station, attendant, and system features that may be made available to CENTRON customers. The feature availability is defined by the system software assigned within each central office equipped to provide CENTRON service. Many of these system features are available as part of, or in conjunction with, PBX systems for station or administrative use. Examples of features commonly used by CENTRON customers are call forwarding and three-way calling. USWC Ex. 75, p. 15. CENTRON is an enhanced service which offers a greater variety of features than the standard IFB or IFH business line. ETI Ex. 18, p. 3.

85. CENTRON service is generally available in USWC exchanges served by analog and digital electronic central office switches. USWC Ex. 75, p. 15. As of 1989, 65 of USWC's central offices in Minnesota provided CENTRON service. 24 Tr. 95. The service is provided in the central offices serving the major Minnesota population centers. USWC Ex. 75, p. 15.

E, Current CENTRON Pricing

86. CENTRON is subject to emerging competition in Minnesota. Minn. Stat. 237.59, subd. 1(5) (1990). The service is meant to be somewhat competitive with PBX systems operated by high volume business users.

87. CENTRON service with NARs and traffic concentration is offered by USWC through a price list and individual contract pricing. DPS Ex. 224, p. 4; USWC Ex. 27 (Prop).

88. There are two facets to CENTRON pricing: rates vary by the number of lines and by the distance from the central office. The combination of these two facets enables CENTRON to be competitive with PBX service. 50 Tr. 17-19. USWC provides price discounts for the purchase of 20 to 47 stations per location in USWC's General Exchange Price List. USWC Ex. 27. This market segment is targeted at competing with key systems. DPS Ex. 224, p. 7. Custom contracts are available for 48 or more CENTRON stations per location. DPS Ex. 224, p. 7; DPS Ex. 218, p. 6. Rates also vary based on the distance from the central office, with the cheapest rates available within one-half mile of the central office. USWC Ex. 27, pp. 28, 46.

F. CENTRON Resale

89. A CENTRON reseller subscribes to CENTRON service provided from the central office in which the reseller desires to resell local exchange service. The reseller is required to subscribe to a number of NARs to limit incoming and outgoing access to the public switched network. The reseller offers resold service by providing CENTRON station service to the appropriate point of demarcation at the end user premises. CENTRON station lines are extended from the LEC central office to the end users location. In contrast, PBX station lines terminate at the PBX system. USWC Ex. 75, p. 18-19.

90. CENTRON resellers generally serve end users who are dispersed

throughout an area within a specified distance from the serving central office.

USWC Ex. 168, p. 9. The reseller aggregates the station lines in a particular

central office into a "common block" served by a specific number of NARs. Greater trunking efficiencies are achieved as the size of a common block increases. 13 Tr. 94-97; 14 Tr. 58-61. The end users in a shared common block have access to all NARs serving that common block. 14 Tr. 37-41. In a CENTRON resale situation, one NAR is needed on average for every

five station lines. USWC Ex. 130 (Prop), p. 3. Maintaining this station line to NAR ratio, CENTRON resellers can ensure unblocked service to customers 99 times out of 100. 4 Tr. 48-49.

91. USWC's CENTRON rite design enables a CENTRON reseller to aggregate access lines of separate small business in order to take advantage of the cheaper transport facility charges offered customers with more than 20 lines. DPS Ex. 224, p. 5. When CENTRON resellers aggregate lines of smaller businesses and purchase larger quantities from USWC, they do so at a lower rate than if the end user of the reseller purchased service directly from USWC. USWC Ex. 167 (Prop), pp. 6-7. Absent this aggregation, many CENTRON resale customers would not find the purchase of the service an economic possibility,

92. Unlike PBX forms of resale, CENTRON resellers can aggregate lines among several buildings without duplicating any portion of the local loop because all of the traffic goes to the LEC central office switch where the NARS are located. USWC Ex. 75, p. 19.

93. CENTRON resale has only one legal restriction on the means used for aggregation. DPS Ex. 223 (Prop), pp. 3, 21. USWC's tariff allows for price discounts beginning at 20 lines only if those lines are located within the same building. See, USWC Centron Price List, USWC Ex. 27 (Prop), Section 5, p. 45. A CENTRON reseller cannot aggregate four customers with five lines each that are located in separate buildings and achieve CENTRON price discounts. ETI Ex. 18, p. 13.

94. Three CENTRON resellers were identified in the record. ETI Ex. 90 (Prop); DPS Ex. 84. Approximately ()% Prop of U.S. West's CENTRON lines are resold. ETI Ex. 188 (Prop), For purposes of its Contribution Study, U.S. West identified () prop resold NARS, representing approximately () prop station lines. USWC Ex. 132-A (Prop). About ()% prop of the resold CENTRON lines and NARS are accounted for by ETI. ETI Ex. 1A (Prop), p. 4; USWC Ex. 19 (Prop). The average ETI customer has () Prop lines. ETI Ex. 1A (Prop), p. 4. A breakdown of ETI customers by number of lines is contained in USWC Ex. 19 (Prop). At least ()% Prop of ETI customers are located within one-half mile of the serving USWC central office. ETI Ex. 38, p. 2.

95. CENTRON resale, like PSTS PBX resale, has not experienced the level of growth previously anticipated. In the past several years, the total number of lines served by ETI, the dominant reseller, has not increased significantly, if at all. CENTRON and PBX resale, including PSTS, account for about ()% Prop of the U.S. West business service market. USWC Ex. 171 (Prop), p. 10.

V. NON-PSTS PBX RESALE IN USWC EXCHANGES--- REQUIREMENTS Or THE PUBLIC CONVENIENCE AND NECESSITY

96. USWC identified (o) Prop resold trunks in Minnesota as compared to () Prop resold NARS. USWC Ex. 132-A (Prop).

97. There is no evidence in the record that non-PSTS PBX resale is occurring in Minnesota. See, Finding 73, *supra*. The data provided by U.S. West regarding PBX resale and attendant contribution loss does not distinguish

between non-PSTS and PSTS applications. DPS Ex. 223 (Prop), p. 21; USWC

Ex. 129, pp. 3-4. Most probably, most if not all resold trunks are used in PSTS PBX applications. ETI Ex. 88.

98. The resale of non-PSTS PBX service would increase customer choice and provide service at a rate lower than U.S. West 1FB/IFH service. DPS Ex. 223 (Prop), p. 21.

99. Allowing non-PSTs PBX applications would also increase the amount of PBX resale available by allowing resale in buildings that do not have enough station lines to justify a stand-alone PBX system. Such buildings may include those having less than an aggregate of as low as 50 station lines. USWC Ex. 168, p. 9. See, Finding 68, supra.

100. Resold PBX service recovers U.S. West's Long-run Incremental Cost of providing such service, with a contribution to joint and common costs. DPS Ex. 223 (Prop), p. 21. PBX resale, however, provides a lower level of contribution to joint and common costs than 1FB/IFH business service or resold CENTRON service, MIC Ex. 113, p. 4.

101. Non-PSTS PBX service applications will duplicate some LEC facilities and result in some stranded investment. DPS Ex. 223 (Prop), p. 21; MIC Ex. 113, p. 4; USWC Ex. 167 (Prop), p. 12; 13 Tr. 5-7; 13 Tr. 59-60.

102. PBX resale results in a displacement of 1FB/1FH business lines. The PSTS and non-PSTS applications of PBX resale result in significant lost revenues and lost contribution to U.S. West, as measured against a 1FB/IFH business service baseline. USWC Ex. 227 (Prop), pp. 1-2; USWC F 132 (Prop), Attachment 1, p. I of 2; USWC Ex. 132 (Prop), Attachment 1, p. , f . U.S. West estimates 1e yearly lost contribution from PBX resale to be Prop. USWC Ex. 132 (Prop), Attachment 3, p. 2.

103. USWC experiences a greater contribution loss with PBX resale generally than with CENTRON resale because PBX resellers do not purchase station lines and features from U.S. West. 4 Tr. 28.

104. There is no evidence in the record of additional, auxiliary or incidental services offered by non-PSTS PBX resellers.

105. There is insufficient evidence in the record to conclude that non-PSTS PBX resale, as defined in Finding 72, supra, is required by the public convenience and necessity. USWC Ex. 171 (Prop), p. 19; OAG Ex. 206 (Prop), p. 4; DPS Ex. 223 (Prop), p. 22.

106. It would be most appropriate for the Commission to consider non-PSTS PBX resale and the requirements of the public interest in case-specific proceedings, when applicants request authority to provide such service. DPS

Ex. 223 (Prop), p. 22. Absent applications for authority to provide such service, it is appropriate to continue the current prohibition against non-PSTS PBX resale.

DISCUSSION

The parties agree that the record does not support positive findings about non-PSTS PBX resale. There is no evidence in the record of the

existence of this type of resale, the costs associated with non-PSTS PBX resale or the attendant adverse consequences. Since Minn. Stat. 237.68 (1990), has determined that PSTS applications of PBX resale are in the public interest, it could be argued that non-PSTS applications should be similarly treated. The record, however, indicates that non-PSTS PBX resale applications may have detriment; beyond those associated with PSTS service. To the extent that unrelated buildings are interconnected, more of the local network would be duplicated, with attendant stranding of LEC investment. MIC Ex. 113, p. 4; DPS Ex. 223 (Prop), p. 21. USWC Ex. 171 (Prop), p. 19. Resold PBX service, whether PSTs or non-PSTs, does result in a revenue and contribution reduction to U.S. West which, on a per equivalent line basis, is more detrimental to the LEC than CENTRON resale. USWC Ex. 167 (Prop), p. 12. There is no evidence in the record of general public benefit associated with non-PSTS PBX resale or a specific demand for the service. In the absence of such evidence, it is appropriate to continue the prohibition on non-PSTS PBX resale until a specific case for its approval is presented.

This result comports with the treatment of PBX resale in other jurisdictions. States that have authorized PBX resale, apart from statute, have limited its application to single buildings or a related campus. Re Local Resale, 74 PUR 4th 317, 335 (Ky. PSC. 1986); Re_South central_Bell, 73 PUR 4th 465 (Ala. PSC. 1986); Re Burlington Telephone Co. 73 PUR 4th 209 (Vt. PSC. 1986); Re_Shared-use_Tariffs, 77 PUR 4th 709 (N.D. PSC. 1986); Re General Telephone Co. of Michigan, 95 PUR 4th 226 (Mich. PSC. 1988). The Administrative Law Judge is aware of no jurisdiction that has approved non-PSTS PBX service generally.

VI. CENTRON RESALE -- PUBLIC INTEREST

A Benefits

1. Benefits to End User Customers -- Pure Resale and Auxiliary Services

107. U.S. West's CENTRON service provides a variety of features to end-users that are not available with IFB/LFH business service. USWC Ex. 76 (Prop), pp. 14-15. Additional features include both system features and station features. ETI Ex. 18, pp. 5-6. At least 25 optional station features are available through CENTRON. Some of the main CENTRON station features include call transfer outside of the system, call forwarding, conference calling, speed dialing, call hold and interim calling. The main CENTRON system features include automatic route selection, station message detail recording and customer dialed account reading. ETI Ex. 18, pp. 5-8. The station features available with CENTRON service are listed in ETI Ex. 18, Ex. A, A description of available features is also included in ETI Ex. 1A

(Prop), Attachment B.

108. Because of volume discounts inherent in U.S. West's CENTRON tariff, small and medium-sized businesses that do not, individually, have at least 20 lines do not have CENTRON service available directly from U.S. West for economic reasons. ETI Ex. IA (Prop), p. 14. See, Finding 88, *supra*.

109. Although CENTRON service includes station features allowing for a more economic, sophisticated business service, most ETI customers limit the

optional features selected to those commonly available with IFB/IFH business service. USWC Ex. 161 (Prop), p. 7. The primary features used by ETI's customers consist of the following: hunting (()) Pr p % call forwarding/variable (()) Prop % ; call forwarding/busy line Prop % call forwarding/don't answer (()) Prop % call waiting Prop % USWC Ex. 161 (Prop), p. 7,

110. Resellers are able to provide a resold CENTRON Service to customers they select at a price that is less than the cost of IFB/IFH service and, by aggregating demand, at prices less than would be charged by U.S. West for a direct purchase of CENTRON service. ETI, for example, can provide a resold CENTRON service at rates that are lower by between (()) Prop in the Twin (itie; to over I(()) plo p in Duluth. ETI Ex. 1A (Prop), p. 13; ETI Ex. 48 (Prop), pp. 8-9; USWC Ex. 132 (Prop), p. 13; 2 Tr. 8-9. For example, a six-line ETI customer taking touchtone, three-way conferencing, intercom and end user transfer, would pay a monthly price to ETI of (()) Prop less than taking a similar USWC service. USWC Ex. 132 (Prop), p. 19; DPS Ex. 223 (Prop), p. 7. The discount increases as the number of lines increases. DPS Ex. 223 (Prop), p. 8.

111. There is no evidence in the record of prices charged by CENTRON resellers other than ETI. Such resellers would, however, have the same ability as ETI to provide a resold CENTRON service at rates significantly lower than U.S. West's IFB/IFH business service and direct CENTRON service.

112. By making an alternative service available to business customers at an economical rate, resold CENTRON service maximizes customer choice. Increased customer choice is a recognized public benefit. DPS Ex. 223 (Prop), pp. 6-7; ETI Ex. 48 (Prop), p. 7; 54 Tr. 63. In buildings that could not support a stand-alone PBX system, resold CENTRON provides a choice over IFB/IFH U.S. West business service. In larger buildings, resold CENTRON provides a choice to either IFB/IFH business service or, potentially, resold PSTS PBX service.

113. Because price differences between resold CENTRON service and IFB/IFH service have been imposed by the Commission in rate design decisions reflecting competing public policy choices, the price differential stated in Finding 110, supra, is not a benefit to be considered in determining the requirements of the public convenience and necessity.

114. The benefits to end-users stated in Findings 107-113, supra, apply equally to pure CENTRON resale and CENTRON resale which includes auxiliary or incidental services.

DISCUSSION

CENTRON service is a sophisticated business offering which provides both system and station features not available economically with IFB/IFH U.S. West business service. Resold CENTRON service is available to customers within a reseller's target market at rates measurably lower than U.S. West's basic business service. The availability of the enhanced CENTRON service at a lower price exists equally with all forms of CENTRON resale.

U.S. Nest argues that most of ETI's customers really have no need for and do not use the enhanced services available with CENTRON. A U.S. Nest witness

noted that most of the features ETI's customers use are available with U.S. West's IFB/IFH business service. USWC Ex. 161 (Prop), p. 7. For those unidentified resale customers, however, that have a need for the more Sophisticated CENTRON services, resale makes those services available economically.

U.S. West argues that the price advantage resellers are able to offer is not a benefit that ought to be considered. The Commission, acting in a quasi-legislative capacity, has priced CENTRON service to meet the needs of large volume users and has determined the appropriate contribution level to be recovered from IFB/IFH business service. Price discrepancies between the two products result from subsidy decisions made by the Commission, rather than inherent service features. If the provision of a less expensive more Sophisticated business telephone service is appropriate, that choice could be implemented by the Commission through appropriate rate design, without the need for CENTRON resellers. The Administrative Law Judge accepts the argument of U.S. West. If a 3:1 rate differential is not appropriate for business service, as set by the Commission in the Company's first post-divestiture rate proceeding, price relief should be applied to business service generally, rather than to a small percentage of businesses optimally located.

2, Auxiliary Services

115. In addition to pure resale of the CENTRON product, a reseller may offer additional auxiliary or incidental services to its end-users. ETI, for example, provides the following additional services to end-users in conjunction with resold CENTRON service: consultation and system design services; installation and training services; telecommunications troubleshooting and repair services; and single billing services. ETI Ex. 29 (Prop), p. 3; ETI Ex. IA (Prop), p. 5; OAG Ex. 206 (Prop), p. 21. Some of these services are provided directly by ETI; other services are only coordinated by the company.

116. Because ETI also resells long-distance service through a variety of long-distance providers and offers voice mail service, it considers itself able to offer a "one stop" shopping source for small and medium-sized customers' telecommunications needs. ETI Ex. IA (Prop), p. 3; ETI Ex. IA (Prop), p. 5; ETI Ex. 29 (Prop), pp. 2-3; ETI Ex. 48 (Prop), p. 7.

117. A reseller providing auxiliary or incidental telecommunications services in addition to the CENTRON product has the potential of acting as a telecommunications manager for small firms that may not be able to afford sophisticated telecommunications assistance. ETI Ex. 48 (Prop), p. 7; ETI Ex. 29 (Prop), p. 3; ETI Ex. IA (Prop), pp. 6-7.

118. It is appropriate to consider the provision of auxiliary or incidental telecommunications services as an element of the multifactor test of public convenience and necessity. Such services are sufficiently related

to the provision of the telecommunications service and are not all available to the same degree or at all from U.S. West. See, Finding 38, *supra*; DPS Ex. 223 (Prop), p. 6; OAG Ex. 206 (Prop), pp. 21-22.

119. U.S. West, at least since 1988, has made a significant commitment to the small business market, U.S. West created the Small Business Services unit to address the needs of small business customers. USWC Ex. 161 (Prop), p. 2.

in Minnesota, USWC has over 100 customer contact employees that are solely dedicated to serve small business customers. USWC Ex. 161 (Prop), pp. 3-4. USWC defines a small business as having 14 or fewer business lines. 36 tr 10; 39 Tr. 16.

120. In addition to its small Business Market unit, U.S. Nest provides service to small business customers in two ways. The Business Service Center responds to customer initiated inquiries. USWC Ex. 161 (Prop), p. 4. The "communication Consulting Centers, established in 1989, make proactive calls to small business customers to assist them in making complex decisions relating to maximizing telecommunications use. USWC Ex. 161 (Prop), pp. 4.5. Through the BSC and CCC, U.S. Nest provides consulting and system design service, installation and training service and repair services to small business customers. USWC Ex. 162, pp. 2-3.

121. Through arrangements with IXCs, U.S. Nest is able to provide a combined bill for local and long-distance service, if the particular IXC has made an arrangement for combined billing with U.S. West. The IXCs having such an agreement with U.S. Nest are listed in USWC Ex. 163 (Prop); Attachment 1.

122. As a result of the MFJ, U.S. Nest cannot provide Customer Premise Equipment consultation or interLATA toll service. USWC Ex. 171 (Prop), pp. 3-4,

123. ETI's services provided to the small business market began in 1984, while U.S. Nest did not establish modern small business service units until 1988 or 1989. 45 Jr. 42; USWC Ex. 161 (Prop), p. 4.

124- In 1990, U.S. Nest surveyed Small Business Service customers regarding their degree of satisfaction with sales assistance and repair service it provided. (()) Prop % of sales assistance customers expressed satisfaction and (()) Prop % of repair customers expressed their satisfaction with the service received. USWC Ex. 161 (Prop), p. 6. This customer response exceeds the degree of satisfaction expressed by end-users receiving service from ETI. USWC Ex. 32 (Prop), p. 4; USWC Ex. 171 (Prop), Attachment 1.

125. The resold CENTRON service provided by ETI results in a significant stimulation of demand for service among its customers that cannot entirely be accounted for by the availability of lower rates. ETI Ex. 48 (Prop), pp. 14-15; DPS Ex. 226 (Prop), p. 6.

126. As a consequence of Findings 115 - 125, supra, the service provided by ETI and, potentially, all resellers providing auxiliary service, is a value added service, rather than the mere arbitrage of CENTRON service. DPS Ex. 224, p. 1; ETI Ex. 2, pp. 2-3; DPS Ex. 35 (Prop).

DISCUSSION

U.S. Nest argues that the auxiliary or incidental services provided by ETI and, potentially, all value-added CENTRON resellers are irrelevant in this proceeding. In applying Minn. Stat. 237.16, subd. 1 (1990), U.S. Nest states that the service at issue is strictly its CENTRON service. The

peripheral services offered by ETI do not require Commission authority under Minn. Stat. , 237.16, subd. 1 (1990). Hence, U.S. Nest contends that any

demonstrated need or benefit relating to such services should be disregarded.

In the alternative, U.S. Nest argues that it can satisfactorily provide most of the added services ETI offers to its customers.

The Administrative Law Judge rejects U.S. West's initial position. The additional services offered by ETI are directly related to the provision of the telephone service and are not all available from U.S. Nest on an equal basis. Under the test stated in Finding 38, supra, the availability of such auxiliary services is appropriately considered.

The auxiliary or incidental services offered by ETI are detailed in ETI by. IA (prop), pp. 11-13, ETI Ex. 29 (Prop), pp. 2-10 and OAG Ex. 206 (Prop), p. 21. A description of the unified ETI bill is contained in ETI Ex. 39, pp. 3-6. The additional services provided by ETI satisfy a customer need and constitute a value-added service. ETI Ex. 2, pp. 2-3; DPS Ex. 224, p. 1; OAG Ex. 206 (Prop), p. 8; ETI Ex. 48 (Prop), pp. 14-15.

While the Administrative Law Judge agrees that U.S. Nest has made a recent significant commitment to its small business customers, some of that attention has only been provided since ETI began business and PSTS PBX resale has been at least a competitive possibility. Moreover, the MFJ prevents U.S. Nest from offering all of the services that a reseller may provide. The Administrative Law Judge does not believe it possible from the record to demonstrate the depth of commitment either ETI or U.S. West has to its small business customers. ETI has certainly specialized in this area. Of more interest to the Administrative Law Judge is the fact that an entity providing auxiliary services could certainly assist those U.S. West customers who are dissatisfied with the support services offered by U.S. Nest. A customer to whom such services were important who was dissatisfied with the support received from either party would have a viable alternative. In this respect, customer choice could prove beneficial to the end-user.

The Administrative Law Judge also recognizes that the combined service offering of ETI has resulted in a stimulation of demand for service that does not result merely from a price advantage. While the parties disagree about the size of the appropriate stimulation factor, all concede that it is

significant. U.S. Nest argues that the only real stimulation present results from the price advantage ETI has over U.S. West IFB/IFH service. USWC Ex. 161 (Prop), pp. 19-20; USWC Ex. 169 (Prop), p. 15; USWC Ex. 171 (Prop), p. 3. The Administrative Law Judge does not find that all of the stimulation in demand can be accounted for by the price advantage ETI offers. See, Finding 125, supra. ETI customers have reacted positively to the "one stop" telecommunications service it offers.

3. Limitations on Availability of End-User Benefits

127. The benefits resulting to end-users from resold CENTRON service are not available to all business customers. The availability of resold CENTRON service depends primarily upon USWC's CENTRON rates. 2 Tv. 54-55. The applicable CENTRON tariff dictates those business customers to whom it is cost effective to market the resold CENTRON service. The primary factors involved in such a determination relate to aggregation of demand within each location and the distance the customer is located from the serving central office. 28 Tr. 17.

128. A prerequisite to the resale of CENTRON service is the availability of such a service at the end office. As noted in Finding 85, supra, U.S. West does not have CENTRON service available in all of its end offices. Only the malow population centers can receive CENTRON service from U.S. West.

129. ETI, the dominant CENTRON reseller, only operates in five exchanges: Duluth Shelard Midway; downtown Minneapolis and downtown St. Paul. ETI Ex. 18, p. 5. ETI may expand to other metropolitan central offices depending on the availability of CENTRON from U.S. West at a reasonable rate. ETI Ex. 18, p@ 5. The ability of ETI to expand the area in which it provides services has been limited both by the cooperation of U.S. Nest and the issues the Commission raised concerning its authority to resell CENTRON service.
3 Tr . I .1 0 .

130. Under the existing CENTRON tariff, a reseller cannot effectively offer service unless it purchases 20 CENTRON lines per building from U.S. Nest. MIC Ex. 15; 1 Tv. 78 79; ETI Ex. 18, p. 13.

131. The U.S. Nest CENTRON tariff is also distance-sensitive. The U.S. Nest tariff has rate zones by distance from the central office. U.S. West Ex. 27. The lowest rate occurs within one-half mile of the central office. MIC Ex. 16. ETI's rates vary by zone corresponding exactly to the USWC CENTRON service catalog tariff. The initial and least expensive zone is within one-half mile from the central office, with zone increments for each one-quarter mile additional distance from the central office. MIC Ex. 16; 2 Tr. P. 4. Because of considerations of the U.S. West CENTRON tariff, most ETI customers are located within one mile of the serving central office and approximately (()) prop 'I, of ETI's customers and lines are located within one-half mile of the serving central office. See, Finding 94, supra; ETI Ex. 38, p. 2; 30 Tr. 39.

132. It is appropriate to consider the number of end users that may benefit from CENTRON resale in applying the multifactor test stated in Finding 27-32, supra.

4. Benefits of ResAle to U.S. West

133. The resale of CENTRON service results in CENTRON market coverage for small and medium-sized businesses. ETI Ex. IA (Prop), pp. 7-9; ETI Ex. IA (Prop), p. 14; ETI Ex. 29 (Prop), pp. 11-12.

134. Resold CENTRON service also stimulates the number of lines that a resale end-user purchases. See, Finding 196-202, infra. ETI also purchases lines which it holds in reserve to qualify for discounts associated with the CENTRON tariff for 20 line; or more in particular locations. USWC Ex, 134 (Prop), Attachment 2, p. 1.

135. Although resold CENTRON service stimulates CENTRON usage, to the

extent that it displaces IFB/IFH service, the increased market coverage provides no net economic benefit to U.S. Nest. See, Finding 156, *infra*. On the contrary, resold CENTRON lines that displace IFB/IFH business lines result in displaced or lost contribution. To the extent that the increased CENTRON usage displaces service other than IFB/IFH, such as PSTS PBX service, U.S. Nest experiences an increase in contribution to joint and common costs. See, Finding 196-202, *infra*.

136. To the extent that resold CENTRON service displaces or retards the development of PBX resale, including PSTS applications, U.S. West benefits. ETI Ex. 1A (Prop), P. 16; DPS Ex. 224, p. 4; DPS Ex. 225 (Prop), p. 2; DPS Ex. 226 (Prop), P. 3; OAG Ex. 209, pp. 5-6.

137. PBX resale provides a significantly lower level of contribution to the joint and common costs of U.S. West than does resold CENTRON service. See, Finding 103, supra.

138. While there is some evidence in the record that the PBX threshold may be as low as 50 station lines, PSTS PBX resale is most likely currently in buildings with () Prop station lines. See, Finding 209, infra.

139. in buildings in which ETI currently provides service in Minnesota, over () Prop % have at least () Prop lines in service and over () Prop % have at least () Prop lines in service. ETI Ex. 48 (Prop), p. B. Based on a recent ETI customer list, () Prop % of the lines served by ETI are located in buildings which have () Prop or more lines. ETI Ex. 50 (Prop), p. 9; ETI Ex. 142, pp. 2-4. Of the customers that have left ETI resold CENTRON service since 1989, at least () Prop lines were lost to alternative PBX service. USWC Ex. 31 (Prop), p. 2.

140. ETI does not know the number of its current customers considering PBX alternatives or how many of its larger customers would purchase a PBX. USWC Ex. 57; USWC Ex. 58. Nor has U.S. West undertaken a comprehensive analysis of the extent to which CENTRON resale substitutes for PSTS or non-PSTS PBX applications. DPS Ex. 136; DPS Ex. 137.

141. The percentage of ETI customers that are likely to take a service other than IFB/IFH if CENTRON resale is prohibited is discussed in Findings 203-214, infra.

142. The existence of CENTRON resale may have impeded the market penetration of PSTS resale. DPS Ex. 226 (Prop), p. 3,

143. As a consequence of Findings 133-142, supra, resold CENTRON service provides a benefit to U.S. West to the extent that it substitutes for resold PBX, including PSTS applications. While the degree to which this phenomenon occurs cannot be quantified with precision, the most objective statement of the number of ETI customers that would take PSTS services if CENTRON resale were not available is stated in Finding 211, infra.

144. The benefit to U.S. West stated in Finding 143, supra, must be offset by the displaced or lost contribution analysis stated in Findings 156-215, infra.

145. An auxiliary service CENTRON reseller such as ETI has some positive impact on the administrative expenses of U.S. West. If, for example, U.S. West billed the end-user customers of ETI, it would be required to prepare an additional () Prop monthly bills with all of the attendant costs. A value-added reseller such as ETI has some unquantified positive impact on the other expenses of U.S. West associated with servicing the end-user customers of the reseller. ETI Ex. 29 (Prop), p. 121 ETI Ex. 48 (Prop), pp. 24-25;

5 Tr. 30-31; 45 Tr. 10-12; 16 Tr. 80-81. The impact on U-S. West's overall administrative costs resulting from CENTRON resellers, while positive, is relatively minute. USWC Ex. 100 (Prop), Schedule 4.

146. Because a reseller bills its end-user customers and assumes the risk of end-user payment. CENTRON resellers have a positive impact on U.S. West's customer bad debt loss. ETI's bad debt expense from its end-users is (()) Prop. ETI Ex. 40 (Prop), P. 2. Based on its annual sales revenue, ETI saves the provider; of the service that is resold (()) Prop in annual bad debt costs. ETI Ex. 48 (Prop), p. 26; ETI Ex. 40 (Prop), p. 2. Some of the had debt experienced by ETI, however, results from the sale of long-distance services, which provides no savings to U.S. West. ETI Ex. 39, pp. 8-9.

DISCUSSION

ETI asserts that it provides significant positive benefits to U.S. West. U.S. West argues that any positive benefits to U.S. West are dwarfed by loss of contribution, as discussed infra. By listing the benefits to U.S. West from CENTRON resale, the Administrative Law Judge concludes that they are, in fact, analytically distinguishable from the issue of lost contribution. Whether a net benefit results from CENTRON resale should be determined only after considering detriments, including lost contribution, and the balancing of all attendant factors.

ETI also argues that CENTRON resale discourages the use of alternative PSTS and PBX resale applications where the contribution to U.S. West's joint and common costs is lower. On an equivalent line basis, PBX resale is more detrimental to USWC than CENTRON resale. This is primarily because USWC receives additional revenue from the sale of CENTRON station lines and features. USWC Ex. 167, p. 12, A PBX reseller who purchases a standard flat-rated PBX trunk will generate (()) Prop, U.S. West Ex. 132 (Prop), Attachment 3, p. 2, in revenues per month and (()) flop per month in contribution. The average monthly revenue received from CENTRON, on a per NAR basis is (()) prop, USWC Ex. 132A (Prop), Attachment 3, p. 1, and (()) Prop per month. To the extent that CENTRON resale discourages either the purchase of a stand-alone PBX or a PSTS application in a building, U.S. West receives more contribution.

No party presented detailed data regarding PBX and PSTS applications as competing with CENTRON service. Historically, U.S. West has considered 20 lines to be the threshold for CENTRON service and approximately 50 lines the threshold for PBX applications. USWC Ex. 167 (Prop), p. 11. When the Commission approved U.S. West's current CENTRON tariff with volume discounts and individual pricing, the PBX market cutoff approximated 50 lines. There is evidence in the record supporting the 50-line cutoff for PBX and PSTS applications. However, other testimony significantly increases the number of lines required before at least PSTS applications become likely. The Department of Public Service witness Dr. Krishnan, in calculating a likely customer mix absent resale, adopted (()) Prop lines per building as the minimum number needed for a viable PBX PSTS service. 54 Tr. 91-93. The estimate was based on a review of the testimony previously filed discussing 50 lines as the PBX minimum cutoff and data relating to existing PSTS operations. U.S. West witnesses testified that a somewhat higher minimum number of station lines would be appropriate. 39 Tr. 51-52; 50 Tr. 72-77. A PSTS operator must also obtain at least (()) Prop % of the lines in a building to have a viable operation. 3 Tr. 72.

The Administrative law Judge adopts the analysis of the Department that the most likely buildings to institute PSTS service would probably have a minimum of (1) Prop station lines per building. Based on those minimums and the customer characteristics of ETI end-users, approximately () Prop of ETI's lines would elect PSTS/PBX service if CENTRON resale were prohibited. 54 Ty. 91. CENTRON resale, therefore, has had some positive impact in limiting PSTS and PBX service applications. DPS Ex. 226 (Prop), 1: OAG Ex, 209, pp, 5 h.

The analysis of the extent to which resold CENTRON service inhibits PBX resale and the consideration of the minimum number of lines needed to support a PSTS system assumes that the Commission does not authorize non-PSTS PBX resale in this proceeding. The revenue loss to U.S. West resulting from non-PSTS PBX applications would be similar to PSTS service. Moreover, by interconnecting a number of buildings in a non-PSTS service application, no single building would require the minimum number of lines previously discussed. Whether or not non-PSTS PBX is approved in this proceeding, the comparison of CENTRON contribution with PBX contribution remains true. To the extent that IFB/IFH lines are replaced by resold PBX and to the extent that resold CENTRON lines are replaced by PBX, U.S. West suffers a significant displacement or loss of contribution under current pricing. If the Commission equalizes the contribution provided by CENTRON and PSTS service in the PSTS rulemaking proceeding, the benefit considered in Finding 143, supra, would no longer be a consideration.

5. Miscellaneous Benefits

147. While economic efficiency and optimal business location are theoretically affected positively by CENTRON resale, there is insufficient evidence in the record that the actual promotion of either results from providing such service. ETI Ex. 48 (Prop), pp. 31-33; 9 Tr. 35-36; 6 Tr. 13-14.

148. Although the assistance CENTRON resale provides to small businesses is asserted to be a public policy benefit, that benefit should not undermine Commission rate design principles or occur at the expense of ratepayers generally. ETI Ex. 1A (Prop), p. 17; DPS Ex. 224, p. 6.

149. It is asserted that resold CENTRON service accords with an emerging state policy to encourage competition in the local service telecommunications market. The Minnesota Legislature has adopted statutes to increase and recognize competition in the telecommunications industry. See, Minn. Stat. 237.625 (1990) Minn. Stat. 0LQQ Stat. 237.071, subd. 2 9 90)

150. The Commission, in specific circumstances, has authorized competition in the provision of local exchange service. See, Tonka Tools, Inc. v. NWB, supra; MFS Order, supra.

151. The Commission, however, has never adopted a policy favoring unlimited competition in the local exchange service market. See, Finding 36, supra.

152. When the Commission has authorized competition in the provision of local exchange service, it has adopted policies which limit the adverse impact

-on the Local Exchange Company and, consequentially, ratepayers generally. *Tonka Tools, Inc. v. NWB*, supra; *MFS Order*, supra.

153. The Commission has adopted a general public policy in favor of averaged rates. *Metro EAS*, Docket No. P-421, et seq., December 20, 1991. deaveraged rates have been approved in limited circumstances only where the existence of competition makes such deaveraging necessary. *DPS Ex. 218 (Prop)*, P. 6.

154. In the absence of probable competition with alternative services such as PBX resale or PSTS applications, resold CENTRON service which, in effect, deaverages rates, does not foster a recognized public policy objective.

155. If providing lower rates for telephone service to small businesses is desirable public policy, that benefit could be provided as a part of U.S. West's rate design, benefiting all small business customers. 10 Tr. 108.

DISCUSSION

ETI argues that approving CENTRON resale will promote an emerging public policy favoring competition in the local exchange market. ETI notes that the Legislature has adopted policies recognizing competition in telecommunications,

Moreover, both the Legislature and the Commission have approved service arrangements which promote competition, even in the local exchange market. See, *Airport Systems v. NWB*, supra; *WATS Order*, supra; *MFS Order*, supra; Minn.

Stat. 237.01, subd. 2 (1990); Minn. Stat. 237.68, subd. 1 (1990). Neither

the Commission nor the Legislature, however, has adopted a general policy favoring competition in the local exchange market. *MIEAC Order*, supra, p. 12;

Application to Resell Telephone Service, P-449/M-84-169, October 10, 1990, p. 2; *Duddy Limited Partnership*, P-467/NA-86-141, April 29, 1987. In those instances in which such competition has been allowed, the Commission has considered the welfare of the serving LEC. In *Airport Systems*, supra, the Commission approved COCOT resale after U.S. West developed a tariff to maintain the contribution it had received from its public coin phone service. Similarly, in the *MFS Order*, supra, the Commission specifically noted that the

proposed fiber system would have a negligible impact on U.S. West, the competing carrier.

A second factor the Commission has considered in implementing competition

is the development of technology which makes true competition possible. In *Airport Systems v. NWB*, supra, the Commission stated that technological development had made private coin phone service practical. The Commission noted that the technology could not be uninvented and prohibiting its application would require an impossible policing effort. *Airport Systems, Inc. v. NH*, supra, P. 5.

As will be later discussed, CENTRON resale cannot be asserted to have a negligible adverse impact on U.S. West, nor does it depend on newly created technology that requires recognition. The Commission has structured

U.S. West's rate design to reflect a monopolistic market for local exchange services. The decisions it has made about the assignment of contribution to various classes of service within the noncompetitive market make general competition in the provision of local exchange service inappropriate.

CENTRON

resale may, however, as noted in Finding 143, supra, provide appropriate competition for PSIS and PBX resale services, where lower contribution to U.S. Nest results. To the extent that CENTRON resale replaces services with lower contribution levels to U.S. Nest, promotion of such resale should be favored by public policy. To the extent that CENTRON resale creates "competitinn" for IFB/IFH service, which is an averaged price, noncompetitive service, such competition does not foster an appropriate public policy.

B. Detriments of CENTRON Resale

1. Adverse Impact, U.S. West

a. Effect of CENTRON replacement

156. To the extent that CENTRON resale displaces IFB/IFH service, for which an alternative service offering is not available, U.S. West receives lower revenues and contributions to joint and common costs than would result from a sale of the IFB/IFH service on a per NAR basis. U.S. West receives monthly revenues per NAR resold of (()) flog. USWC Ex. 132-A (Prop), p. 1. The average monthly revenue received for five IFB lines which would be replaced by a single NAR is (()) [lop per line, 52 Tr. 10, or (()) p for the five-line equivalent of one NAR. From one CENTRON NAR, U.S. West receives monthly contribution of (()) prop. The contribution per month for five IFB lines is (()) Prop per line or (()) prop for the five-line equivalent of one NAR. (Derived from USWC Ex. 132A (Prop), Attachment 3, p. I and 52 Tr. 3.)

157. CENTRON regale, however, does recover its Long-run Incremental Cost and provides the contribution stated in the previous Finding. CENTRON resale provides a percentage contribution per access facility second only to IFB/IFH service. Comparing relative dollar contributions on an access line basis, resold CENTRON service provides more contribution than any other service except for IFB/IFH. ETI Ex. 48 (Prop), p. 3; ETI Ex. 49, Ex. TZ-9.

b, "Lost Contribution Analysis" -- Validity

158. U.S. West asserts that CENTRON resale has a negative impact upon U.S. Nest revenues and contribution by diverting IFB/IFH customers to resold CENTRON service. The analysis contends that the diversion of IFB/IFH customers to CENTRON service with lower contribution per access line results in lost revenues and lost contribution to U.S. Nest, as compared to a scenario in which CENTRON resale is prohibited. Using a number of assumptions, U.S. Nest, the DPS and OAG have quantified the amount of lost revenue and contribution asserted to result from CENTRON resale. Both the Department and the OAG, however, disagree with U.S. West's conclusion that actual monies are inappropriately lost by U.S. West.

159. ETI asserts that U.S. West loses no revenues or contribution as a result of CENTRON resale. It argues that since resold CENTRON service recovers its Long-run Incremental Cost and provides a contribution to joint and common costs that exceeds all other services per access line except IFB/IFH service, hypothesizing theoretical lost U.S. Nest revenues and contribution is inappropriate.

160. The Commission, in its Hearing order, requested the Administrative Law Judge to determine the impact that CENTRON resale has on the Local Exchange Company, here U.S. West.

161. In 1987-1988, U.S. West was the subject of a general rate Proceeding, based on a 1986 test year. Complaint by the United States Department of Defense, Docket No. P-421/CI-86-354, February 11, 1988. At the time of the 1987 proceeding, ETI had about (()) Prop I of its current lines installed. USWC Ex. 167 (Prop), pp. 37-38. In 1987, U.S. West was aware that ETI would have approximately (()) Prop lines in service by 1990. 25 it, 21- In the 1987 proceeding, therefore, about 40% of any financial impact of CENTRON resale, at current penetration levels, was recognized. U.S. West asked for no adjustment in its 1987-88 proceeding to specifically account for the effects of CENTRON resale,

162. In 1989, while CENTRON resale penetration was at its current level, U.S. West voluntarily requested to be governed by an incentive regulation plan. The Company proposed an incentive plan without first questioning and having resolved any complaints about its earning levels or the reasonableness of individual rates. U.S. West requested no adjustment either to earning levels or rate design to account for lost contribution from CENTRON resale.

163. In an Order dated June 7, 1990, the Commission approved U.S. West's incentive rate plan. Re Northwestern Bell Telephone Company's Proposed Incentive Regulation Plan, P-421/EI-89-860, June 7, 1990. As part of that proceeding, the Commission found that it had no substantial reason to believe U.S. West's revenue requirement or existing rates were inappropriate. Order, supra, pp. 11-14.

164. At the time of the Commission's Order of June 7, 1990, CENTRON resellers had in place more lines than the current amount. 6 Tr. 13.

165. Since 1987, U.S. West has consistently met its revenue requirement and has exceeded the threshold return on equity level required for sharing profit with end-users. 49 Tr. 93-94; ETI Ex. 2, p. 8; 48 Tr. pp. 32-33.

166. As a consequence of Findings 161-165, supra, USWC loses no actual monetary amounts in lost contribution as a result of CENTRON resale at current penetration levels. As a result of its last two general rate proceedings, U.S. West is receiving compensation from ratepayers sufficient to meet its revenue requirement and target rate of return. Contribution responsibility is partially shifted. See, Finding 168, infra.

167. In neither of the Company's last two rate proceedings did the Commission consider whether CENTRON resale was making an appropriate contribution to joint and common costs. In fact, the Commission did not even become aware of ETI's resale activities until after the incentive proceeding.
See, Discussion following Finding 14, supra.

168. Since the Commission has never authorized CENTRON resale and has never determined that the contribution received from such resale is appropriate in the context of a general proceeding including rate design, the effect of CENTRON resale, at its current level of market penetration, is to shift a revenue and contribution responsibility from CENTRON resale customers to other services or, even, to residual ratepayers.

169. Hence, even though at its current level Of market penetration, .5. West loses no actual dollars in contribution from CENTRON resale, the effect is to reassign partial responsibility for revenue and contribution in a manner the Commission has never specifically considered or authorized.

170. CENTRON resale has a significant potential for expanding its market penetration beyond current gales levels. For example. while the number of CENTRON lines nerved by ETI in the Minneapolis exchange is (()) Prop, the total lines in the buildings served by ETI in that exchange is Prop. DPS Ex. 36 (Prop); DPS Ex. 37 (Prop): 20 Tr. 112-13.

171. To the extent that CENTRON resale increases its market penetration "ver the number of lines that were implicitly included in the Company's last several general rate proceedings, U.S. West could lose actual contribution, even with incentive regulation. USWC Ex. 167 (Prop), p. 141 USWC Ex. 171 (Prop), P. 11,

172. Encouragement U.S. West gave to ETI to engage in CENTRON resale does not justify overlooking the actual and potential impact CENTRON resale has on U.S. West. The doctrine of estoppel or waiver does not apply when issues involve the public interest nor can private actions create an estoppel against the public interest. Petition_of New Ulm_Telecom Inc., 399 N.W.2d III (Minn. App . 1 987) .

173. When the Commission has authorized an additional service, apart from a general rate proceeding, it has considered the impact of the service on the local Exchange Company and attempted to achieve revenue neutrality. Airport Systems, Inc. v. NWB, supra; MFS Order, supra.

174. The adverse impact on the Local Exchange Company resulting from the displacement of IFB/IFH customers by CENTRON resale end-users has been recognized as a reason to prohibit CENTRON resale. See, Pacific Northwest Bell Telephone Company, d/b/a U.S. West Communications, 114 PUR 4299, 332-35 (Oregon PUC, 1990).

175. Because CENTRON resale results in displaced or, potentially, lost contribution by making a competitive CENTRON service available to IFB/IFH customers, that effect must be recognized as part of the multifactor analvsig. The level of contribution provided by CENTRON resale does not affect the existence of the displaced or lost contribution phenomenon recognized in Finding 156, supra.

176. As a result of Findings 156-175, supra, in considering the impact of CENTRON resale on U.S. Nest, it is appropriate to consider the phenomenon of lost or displaced contribution described in the previous Findings.

DISCUSSION

ETI argues that the lost contribution analysis offered by U.S. West and supported by the DPS and OAG is a hypothetical construct that the Commission

should disregard. ETI points to the level of contribution made by CENTRON resale and concludes that it provides a significant contribution over the Long-run Incremental Cost of the service. On this basis, it argues that any attempt to construct a hypothetical contribution analysis is entirely

inappropriate for the reasons discussed in the Findings, the Administrative Law Judge rejects ETI's position. It is clear that the effect of CENTRON resale is to provide CENTRON service to a large number of businesses that would be IFB/IFH customers; in the absence of resale. The Commission set the current CENTRON tariff to provide competition with PBX service. In neither that filing, nor in the Commission's most recent U.S. West rate cases has it considered the propriety of CENTRON resale and determined an appropriate resale contribution level. ETI cannot deny that the displacement or loss occurs, ETI's argument is more appropriately made in a general rate proceeding where competing rate designs are considered, not in a proceeding to determine whether an additional service is in the public interest.

The Administrative Law Judge agrees with ETI that at the current level of market penetration, U.S. West is not losing actual dollars in contribution from CENTRON resale. As the Findings indicate, CENTRON resale market penetration was at approximately its current level when the Commission approved the Company's existing rate design in 1987 and 1990. When the Commission set the appropriate rate design and contribution levels for service, it was unaware that CENTRON resale was occurring. When it determined the amount of contribution to be received from IFB/IFH service, other services and residual ratepayers, it made no conscious policy choice that CENTRON resale was in the public interest. Neither did it conclude that the shifting of contribution amounts to other services or residential ratepayers was in any way appropriate.

Although the current market penetration of CENTRON resale has been accounted for in the Company's last rate proceedings, substantial expansion of the CENTRON resale market is possible. Such a displacement of IFB/IFH customers by CENTRON resale would have a significant absolute impact on U.S. West revenues and contribution, beyond the shift of responsibility for some revenues and contribution at existing market penetration levels. Given a sufficient amount of expansion, CENTRON resale would place an upward pressure on rates even under incentive regulation.

The concern for lost contribution has led the Oregon Commission to prohibit CENTRON resale. Pacific Northwest Bell Telephone Company, UT85, Order No. 90-920, 114 PUR 4th 299, 332135 (1990). In the case relied upon by ETT, Ohio Bell Telephone Company, 89-848-TP-CS (Ohio PUC 1991), Appendix to initial Brief of Enhanced TeleManagement, Inc., Tab 3, there is no evidence that CENTRON in Ohio provides less contribution than IFB/IFH service or that the Commission considered and rejected a lost contribution analysis. In the final guidelines for CENTRON resale approved by the Ohio Commission, resale was only authorized where measured service was available.

At this juncture of the analysis, the Administrative Law Judge is considering only the impact that CENTRON resale has on U.S. West. To the extent that it causes IFB/IFH business customers with no competitive service available to switch service, it results in displaced or lost contribution. How that fact should be accounted for in applying the multifactor test of public convenience and necessity will be considered later.

OAG, DPS and ETI argue that since U.S. Nest encouraged ETI to begin reselling CENTRON service, an estoppel should be applied in judging the impact of CENTRON resale on the Company. The Administrative Law Judge believes that the Commission must determine the requirements of the public interest. The duty imposed on the Commission by Minn. Stat. 237.06 (1990), differentiates

this proceeding from one to adjust the relative claims of ETI and U.S. West. given the Commission's responsibility to determine the requirements of the public interest, the argued estoppel is irrelevant. Petition of New ULM Telecom, Inc., 399 N.W.2D III (Minn. App. 1987). See, state v. Independent School District No. 810, Wabasha County, 109 N.W.2d 596, 602 (Minn. 1962); Shackley Fidelity Mutual life Insurance Co., 21 N.W.2d 235, 238 (Minn. 1945).

c. Quantification of Lost Contribution

177. The constituent factors that must be considered in attempting to quantify lost or displaced contribution include: costs; revenues; station lines to NAR ratio; stimulation of demand; and customer mix. USWC Ex. 130 (Prop), p 7; DPS Ex. 223 (Prop), P. 20.

(I) Costs

178. USWC performed a cost study for providing resold CENTRON services estimated on a NAR basis. USWC Ex. 100, Sch. 4.

179. The only issue between the parties regarding the cost of providing resold CENTRON service was the loop length for ETI end-users. USWC revised its loop length estimate downward significantly. 31 Tr. 8.

180. The USWC cost study is not a true long-run incremental cost study. OAG Ex. 208 (Prop), pp. 4-5. It is, however, the best record evidence available for determining the cost of providing resold CENTRON service. OAG Ex. 208 (Prop), P. 55 ETI Ex. 49 (Prop), pp. 4-5; ETI Ex. 50 (Prop), p. 24; USWC Ex. 104, P. 10.

181. As a consequence of Findings 178-180, supra, the USWC cost study, as revised provides a reasonable estimate of the long-run incremental cost per NAR for serving CENTRON resellers.

182. Some updating of the costs of providing resold CENTRON services are identified on USWC Ex. 132A, Attachment 3, p. 1.

183. USWC's estimate of IFB/IFH costs is reasonable.

184. The costs of providing resold CENTRON identified in the previous Findings are appropriately used for the cost of direct CENTRON service. USWC's calculation of PBX trunk costs, adjusted for ETI specific loop costs, is appropriate since the major trunk service in the relevant customer mix is a PSTs service which is a form of resold PBX service.

185. USWC provided no estimate of the cost of providing measured business service. This particular service is a very small portion of any of the proposed customer mixes. It is reasonable to utilize the cost for this service provided in ETT Ex. 49A (Prop), Sch. TZ-10, p. 2.

(2) Revenues

186. The appropriate revenues for resold CENTRON service are stated on USWC Ex. 132A (Prop), Attachment 2, p. 1.

187. the revised resold CENTRON revenues stated in USWC Ex. 132A (Prop), Attachment 2, p. 1, are an appropriate substitute for direct CENTRON revenues.

188. The most appropriate statement of measured business service revenues maintained in ETI Ex. 49 (Prop), Sch. TZ-10.

189. The appropriate revenue per line for IFB/IFH service is Prop, 52 Tr. 10. This figure includes the weighted average of revenues of lines served at the nonmetr rate for ETI's Duluth customers. This amount is derived from the following sources: USWC Ex. 130, Attachment 2, p. 11 USWC Ex. 132, Attachment 3, p. 1; 52 Tr. 10.

190. U.S. West included in its calculation of average revenue per line the FCC Carrier Access Line Charge. (CALC).

191. The FCC requires CALC to be charged on a per line basis for IFB and CENTRON services and on a per trunk basis for PBX service.

192. In Matter of Four Tariffs Filed by Northwestern Bell Telephone Company Requesting the Repricing of CENTREX and CENTRON, and the Detariffing of CENTRON, Docket Nos. P-421/M-83-466, P-421/M-84-24, 25 26, September 11, 1984, p. 8, the Commission allowed CALC for CENTRON to be charged on a per NAR basis to avoid a perceived competitive disadvantage with PBX service. The Commission gave an intrastate revenue credit to CENTRON customers.

193. The move IFB/IFH lines that are converted to CENTRON resale, the move revenue credits apply. The result is a reduction in Minnesota intrastate revenues and contribution.

194. To the extent that CENTRON resale converts IFB/IFH business lines to CENTRON service for customers who would not otherwise have competitive options available, it is appropriate to consider the loss of CALC revenue that results from CENTRON resale, in estimating lost or displaced contribution. USWC Ex. 134 (Prop), P. 2.

(3) Station Line to NAR Ratio

195. The appropriate IFB/IFH station line to NAR ratio is approximately

Prop. ETI Ex. 49 (Prop), p. 21; USWC Ex. 132 (Prop), p. 20; USWC Ex. 134 (Prop), P. 4; DPS Ex. 226 (Prop), p. 7.

(4) Stimulation of CENTRON Station Lines

196. In comparing the contributions with CENTRON resale to contributions in the absence of resale, it is appropriate to consider any stimulation of lines resulting from CENTRON resale. DPS Ex. 223 (Prop), p. 20. Since CENTRON resale involves a stimulation of lines taken, to represent a without resale condition accurately, current data on measured and IFB/IFH customer lines must be destimulated by use of the appropriate factor. DPS Ex. 223 (Prop), pp. 15-16. PSTS, PBX and U.S. West direct CENTRON service should not be destimulated. 46 Tr. 21.

197. The stimulation factor measures the extent to which customers purchase move lines upon switching service from USWC service to reseller service. USWC Ex. 131, p. 8. Stimulation occurs if there is an increase in

the number of lines being purchased immediately upon a customer taking service from a reseller. 55 Er. II. The lower the stimulation factor, the higher the contribution loss. 16 Tr. 53.

198, At least some of the difference in the number of lines taken could be a result of natural business growth. OAG Ex. 206 (Prop), p. 15; USWC Ex. 132 (Prop), P. 10; MIC Ex. 113, P. 7.

199. In order to eliminate the effects of natural business growth, Simulation should be estimated at the cut-over date from USWC to resold CENTRON service. It is also appropriate to eliminate customers for whom the data indicated the taking of zero lines from USWC prior to taking the resold CENTRON service. DPS Ex. 226 (Prop), Sch. GK-3S; USWC Ex. 130, Attachment 5; ETI Ex. 49 (Prop), Sch. TZ 11.

200. USWC provided stimulation data resulting from three CENTRON resellers in 1990 and part of 1991, in addition to 1989 data. USWC Ex. 132 (Prop), Attachment 4. This timeframe, 1989-1991, is the most appropriate period to use to calculate stimulation at cut-over from USWC service to CENTRON resellers. DPS Ex. 226 (Prop), p. 6.

201. It is also appropriate to remove from the sample customers taking at least (()) prop lines. DPS Ex. 226 (Prop), p. 6. In the absence of resold CENTRON, such customers would likely take a CENTRON service directly from U.S. West rather than taking IFB/IFH service. DPS Ex. 226 (Prop), p. 6. The direct CENTRON market is designed to include persons taking at least 20 lines. DPS Ex. 224, Sch. GK-2R; Finding 88, supra; USWC Ex. 167 (Prop), p. 11. Because customers with 20 or more lines are candidates for direct CENTRON service, there is no reason to expect for such customers the type of stimulation experienced with smaller customers. DPS Ex. 226 (Prop), pp. 5-6.

202. As a consequence of Findings 196-201, supra, the most appropriate stimulation factor to use in the analysis is (()) prop. DPS Ex. 226 (Prop), P. 6.

(5) Customer Mix

203. Because different USWC services provide different revenue and contribution levels, it is necessary to determine the services that would be taken by resale customers absent resale to attempt to quantify lost or displaced contribution. The services that would be taken absent resale is the appropriate customer mix.

204. In determining the customer mix absent resale, it is inappropriate to assume that customers will necessarily return to the same service taken prior to the availability of CENTRON resale.

205. The direction of the Commission, in the Hearing Order, to consider the impact of resale on the IFC does not require a "before resale" and "during resale" analysis, as advanced by U.S. West.

206. The most appropriate analysis is a comparison of services currently being taken with the services resale customers are most likely to take if CENTRON resale is prohibited. DPS Ex. 223 (Prop), p. 20. This analysis

assumes that the current resale customers will gravitate to the appropriate market segment with a less expensive service alternative. 54 Tr. 92.

207. In the absence of CENTRON resale, current resale customers taking or move lines would most probably take direct CENTRON service from U.S. Nest, 54 Tr. 92.

208. (()) Prop of ETI customers take at least 20 lines, USWC Ex. 63 (Prop). 54 Tr. 91.

209. While there is differing evidence in the record regarding the number of lines necessary to establish PSTS service in a building location or campus, a minimum of (()) Prop lines in a location is a reasonable surrogate for the required concentration. 54 Tr. 93.

210. (()) prop of ETT's lines are located in buildings with at least Prop lines, after all customers with at least (()) Prop lines are subtracted. 54 Tr, 91; DPS Ex. 36 (Prop); DPS Ex. 37 (Prop),

211. As a consequence of Findings 203-210, supra, it is appropriate to use (()) Prop of ETT lines as the number of lines likely to take PSTS service absent CENTRON resale.

212. (()) Prop of ETT lines would take measured business service absent resale. 54 Tr. 91.

213. By subtraction from 100% and as a consequence of Findings 203-212, supra, approximately (()) Prop of current ETI customers would take IFB/IFH service from USWC absent resale. 54 Tr. 91.

214. Since ETI is the dominant CENTRON reseller, it is appropriate to use the customer mix percentages from Findings 203-214, supra, for all CENTRON resellers.

(6) Summary of Amount of lost or Displaced Contribution

215. As a consequence of Findings 177-214, supra, the current annual impact of CENTRON resale on USWC contribution, as compared to contribution received if CENTRON resale were prohibited, is approximately (()) Prop DPS Initial Brief (Prop), Attachment A. Given the current market penetration of resold CENTRON service, this amount is received by U.S. West from other services or the residual ratepayers.

DISCUSSION

U.S. West sponsored a study in which it attempted to calculate the amount of lost contribution resulting from CENTRON resale. USWC Ex. 132A (Prop), Attachment 3, p- I of 3. U.S. West calculations showed an annual contribution displacement from CENTRON resellers of approximately (()) Prop U.S. Nest calculated this amount by comparing the service that resale

customers took from U.S. Nest prior to becoming resale customers and the resulting contribution with the contribution received by the Company from current resale customers. U.S. Nest contends that this comparison is required by the Commission's directive to consider the impact of CENTRON resale on contribution received by the LEC. The Department of Public Service and the

Office of the Attorney General supported an analysis in which the current contribution from resale customers is compared with the likely amounts to be received from such customers if CENTRON resale were prohibited and they migrated, necessarily, to other services. DPS witness Krishnan testified that a realistic estimate of contribution impact due to CENTRON resale should consider "any additional contribution gained or lost from those customers that did not take IfB service from USWC prior to taking service from CENTRON resellers that has occurred in the past and is likely to occur in the future." DPS Ex. 223 (Prop), p. 20. ETT disagrees with the analysis underlying a lost or displaced contribution inquiry. It did, however, provide various estimates of the effect of CENTRON resale on contribution under several different scenarios. ETI believes that, if a contribution analysis is attempted, the current situation with CENTRON resale should be compared to the contribution that would be received from former resale customers if CENTRON resale were prohibited and they all migrated to other services. ETI Ex. 50, p. 4.

the Administrative Law Judge accepts the analysis of the Department of Public Service and the Office of the Attorney General that U.S. West's methodology substantially overstates the amount of lost or displaced contribution. In no sense is contribution lost or displaced if it could not be regained by prohibiting the offending service. It is appropriate, therefore, in measuring the amount of lost or displaced contribution, as a detriment of CENTRON resale, to consider the amount of contribution that could probably be regained if CENTRON resale were prohibited. That is the amount of contribution displaced or put at risk by the service, not the comparison made U.S. West.

Few issues arose regarding the cost and revenue information provided by U.S. Nest upon which it based its calculation. The initial dispute which has a significant monetary impact on the calculation is whether the revenue data should reflect CALC charges, U.S. Nest has calculated that the impact of including or excluding CALC charges is approximately (()) Prop. U.S. Nest Ex. 134 (Prop), p. 2. ETI estimates CALC charges at a lower amount. ETI argues that it is appropriate to exclude from revenues the CALC charges because it is a portion of an interstate revenue requirement. ETI Ex. 49 (Prop), p. 5. The Administrative Law Judge believes that the decision of the Commission in Matter of Four_Tariffs Filed by Northwestern_Bell Telephone

Company Requesting the Repricing of CENTREX and the Detariffing of CENTRON, Docket No. P-421/M-83-466, et seq, September 11, 1984, makes it appropriate to include in the calculation of average revenue per line the CALC charges, The revenue credits ordered by the Commission in that proceeding are applied with Minnesota jurisdictional revenues. Hence, to the extent that resold CENTRON service displaces IFB/IFH customers, intrastate revenues will subsidize the required CALC charge which is only paid on a per NAR basis. The effect of the Commission's decision to charge CALC on a per NAR basis for CENTRON service creates more Minnesota intrastate revenue credits as IFB/IFH lines are converted to CENTRON resale. It is appropriate to capture the resulting decrease in Minnesota intrastate revenues and contribution in determining the impact of CENTRON resale on the LEC.

The second major item of dispute is the appropriate stimulation factor to be used. The lower the stimulation factor, the higher the level of displaced or lost contribution. 46 Tr. 53. U.S. West analyzed the records of customers

who took service from CENTRON resellers during 1989, 1990 and a portion of 1991. The actual stimulation experienced, based on 1989 data, was (()) Prop. USWC Ex. 130 (Prop), Attachment 5. 1990 and 1991 data showed a Prop stimulation factor. USWC Ex. 132 (Prop), Attachment 4. When the 1989, 1990 and 1991 data are combined, the resulting stimulator factor is (()) Prop, U.S. Nest, in its study, used the stimulation factor taken from the 1990 and 1991 data. On other occasions, U.S. West had estimated such Stimulation to be within a range of (()) prop. DPS Ex. 223-(Prop), pp. 15-17.

The Department of Public Service arrived at its stimulation estimate of Prop by taking the 1989, 1990 and 1991 data relied upon by U.S. West in USWC Ex. 130 (Prop), Attachment 5 and USWC Ex. 132 (Prop), Attachment 4, and eliminated customers with (()) prop or more lines. DPS Ex. 226 (Prop), P. 6; DPS Ex. 226 (Prop), Sch. G-K 3-S. The calculation also excludes customers who did not take service from USWC prior to taking service from resellers. Such customers are eliminated to avoid an overstatement in the results. Customers with (()) prop or more lines are appropriately removed from a stimulation calculation because it is unlikely that they would take IFB/LFH service if resale were prohibited. DPS Ex. 226 (Prop), p. 6. The Office of the Attorney General adopted the Department of Public Service's stimulation estimate. Initial Brief of the Office of the Attorney General December 10, 1991, p. 32. ETI concluded that the appropriate stimulation factor was in a range from (()) Prop. ETI Ex. 49 (Prop), Sch. TZ-11. The point estimate within that range supported by ETI was prop, 10 Tr. 96.

While it is impossible to determine a precise stimulation factor with absolute precision, the Administrative Law Judge believes that the estimate by the Department of Public Service is most reasonable for use in a lost or displaced contribution analysis. It is most reasonable to rely on the more recent complete 1989 and 1990 and partial 1991 data to calculate the appropriate stimulation factor. As recognized by Dr. Krishnan, relying on the data prepared by ETI in DPS Ex. 223 (Prop), Sch. GK-5D would be inappropriate due to inherent problems with the data presented. 55 Tr. 13-33. Approximately 2-112 years data on ETI customers is a sufficiently large sample with reliable supporting data to calculate stimulation. It is also appropriate to remove from the data all customers with (()) Prop or more lines. Persons with

p or more lines are likely candidates for direct CENTRON service absent resale.

The final factor necessary is an estimation of the appropriate customer mix in an absent resale scenario. Since ETI is the dominant CENTRON reseller, an analysis of its customers is a reasonable surrogate for data on all CENTRON resellers. U.S. West rejects an analysis which includes any estimate of what services customers would take if resale was prohibited. Implicitly, U.S. West assumes that resale customers would return to those services purchased prior to becoming CENTRON resale customers. As demonstrated by the Department, however, at least (()) prop I of ETI customers are likely candidates for direct U.S. West CENTRON service, if CENTRON resale is prohibited. USWC Ex- 63 (Prop); 54 Tr. 91. Because U.S. West does not account for this likely switch in services, absent resale, its lost contribution analysis is overstated. USWC Ex. 130 (Prop), p. 9.

ETI, on the other hand, overstates the likely PSTS and PBX candidates among its current customers. In Exhibit TZ-10 of ETI Ex. 49 (Prop), ETI calculated lost contribution, at a maximum, of (()) PI-op. In its analysis, it assumed that (()) Prop % of customers would revert to a PBX or PSTS service, if CENTRON resale were prohibited. As demonstrated by DPS witness Krishnan, however, fully (()) prop of ETI's customers are within the market of U.S. West's direct CENTRON services. Moreover, an analysis of the likely potential for PSTS service in ETI's customer service premises, shows that only (()) Plop of ETI's lines are located in buildings where PSTS service would be economically feasible. This comports with U.S. West's experience in its 1988 study. ETI Ex. 119 (Prop), Attachment A. During 1988, (()) Pro) of the lines USWC customers had before switching to ETI were trunks. ETI Ex. 119 (Prop), Attachment A, p. 2 of 2. The Administrative Law Judge realizes that the threshold for PSTS service adopted by the Department in its analysis of (()) Prop lines is not based upon exhaustive study. 54 Tr. 93-94. It does, however, comport with practical experience with current PSTS providers. It is the most reasonable estimate in the record for determining the likely PSTS displacement of lines used by ETI's current customers, if resale of CENTRON were prohibited.

It is most reasonable to assume that, in the absence of CENTRON resale, Prop of current ETI customers would subscribe to a measured business service. 54 Tr. 91; ETI Ex. 49 (Prop), p. 29-30. By subtraction, therefore, approximately (()) Prop of current ETI customers would take IFB/IFH service from USWC absent CFNTRON resale. 54 Tr. 91.

In summary, the Administrative Law Judge has largely adopted the calculation of lost or displaced contribution sponsored by the Department of Public Service, as finally calculated at Proprietary Attachment A to its Initial Brief, December 10, 1991. The DPS calculation is the most balanced presentation in the record of the annual contribution loss or displacement that U.S. West experiences. The Office of the Attorney General adopted the components of the Department of Public Service analysis and substantially replicated its calculation for ETI alone. Initial-Brief of the Office of Attorney General, December 10, 1991, pp. 31-33.

d. Cream Skimming

216. It is asserted that CENTRON resale has an upward impact on 1FB/1FH rates for U.S. West business customers who are not able to avail themselves of resold CENTRON service. OAG Ex. 206 (Prop), p. 4; USWC Ex. 167 (Prop), p. 15; USWC Ex. 102 (Prop), pp. 20-21; USWC Ex. 169 (Prop), pp. 16-17.

217. IFB/IFH rates are nondistance-sensitive and are based on averaged costs. Because of the short distance CENTRON resale customers are located from the central office, the cost of service associated with such customers is

lower than the cost of service for IFB/IFH customers located longer distances from the central office.

218. When lower cost IFB/IFH customers become CENTRON customers, the average cost of providing service to IFB/IFH customers increases with an upward pressure on IFB/IFH rates. MIC Ex. 113, p. 6.

219. To the extent that CENTRON resale removes customers from IFB/IFH service that do not have a competitive service available, resellers are not merely filling a service niche, as asserted by ETI. ETI Ex. 2, p. 4.

e. Bypass

220. CENTRON resale does not appreciably increase the risk to USWC of Service bypass. ETI Ex. 50 (Prop), pp. 3-4.

2. Undermining of Commission Policy Goals

221. By making a competitive service available to customers with no competitive service otherwise available, CENTRON resale Undermines Commission policy favoring averaged rates, a 3:1 differential for business and residential rates, and the existing CENTRON pricing structure. MIC Ex. 197; USWC Ex. 167 (Prop), pp. 23, 6-7; USWC Ex. 169 (Prop), pp. 18-19.

DISCUSSION

U.S. West and MIC argue that the existence of CENTRON resale undermines Commission public policy objectives. The Commission has determined that a 3 to 1 differential is appropriate for business and residential rates. When the Commission established the CENTRON tariff, it gave discounts to larger users, both because of the greater revenues and lower usage per line experienced by larger businesses, and in order to retain the contribution from those businesses to the joint and common costs of U.S. West when non-USWC service alternatives were available. The Commission has also indicated a strong desire to retain averaged rates where that approach is feasible, given competitive alternatives. As was demonstrated in Findings 177-214, supra, at current market penetration levels, CENTRON resale causes a shift in the amount of contribution that is available to defray joint and common costs from IFB/IFH service. The Commission has never adopted a public policy approving such a contribution shift. Moreover, given a significantly higher market penetration of CENTRON resale, U.S. West would lose actual contribution resulting in an upward pressure on rates generally.

ETI argues that the 20-line qualification for discounts in the CENTRON tariff is inappropriate. In its mind, any business that can avail itself of the service should be allowed to do so. It is not a question of "qualifying" for an advantageous tariff. ETI Ex. 2, pp. 5-6; ETI Ex. 50 (Prop), pp. 19-20. There are, however, a number of valid reasons why a CENTRON tariff could be designed to provide benefits only to larger customers. Large customers tend to have a higher number of lines and order a higher number of features. Large customers also tend to have lower usage per line which translates into lower per line costs. Moreover, if large customers are lost to non-USWC alternatives, the effect is counter-productive, with contribution to joint and common costs lost. MIC Ex. 197.

It is not the province of the Administrative Law Judge to question the wisdom of the current CENTRON tariff, with the price thresholds established by the Commission. Apparently, the Commission examined alternative public policy considerations and intended to maximize the amount of contribution by limiting the availability of the CENTRON tariff to customers who had a competitive alternative. Given that objective, to the extent that CENTRON resale extends the tariff to end-users who would not otherwise be included, public policy objectives of the Commission are undermined by CENTRON resale.

C. Requirements of Public Convenience and Necessity

222. Some need for CENTRON resale to smaller business customers has been demonstrated, apart from price service discounts.

223. USWC, because of the MFJ, cannot meet the demand for all auxiliary or incidental services that a CENTRON reseller may choose to provide.

224. CENTRON resale, at current market penetration levels, causes a significant displacement of contribution from IFB/IFH service to other services. At higher market penetration levels, USWC could lose actual monetary amounts, with an upward pressure on rates generally.

225. The benefits U.S. West experiences by having a lower bad debt expense and minutely lower administration costs are outweighed by the "displaced contribution" phenomenon.

226. The financial impact CENTRON resale has on USWC undermines Commission policy objectives related to averaged rates, contribution from IFB/IFH service, and the availability of CENTRON service in the absence of competitive alternatives.

227. Where an actual competitive alternative does not exist for a service, desirable competition is not fostered by applying a deaveraged tariff to end-users who do not fit the service criteria for which the tariff was designed.

228. To the extent that market penetration of CENTRON resale increases over existing levels and that service inappropriately captures a portion of the IFB/IFH market, adverse consequences will result to USWC ratepayers generally.

229. As a consequence of Findings 156-221, supra, the only substantial detriment of CENTRON resale is its adverse financial impact on USWC in the form of contribution displacement or, potentially, contribution loss. The undermining of Commission policy by CENTRON resale also results from its adverse financial impact on USWC.

230. As a consequence of Findings 107-221, supra, CENTRON resale by a service provider who also makes auxiliary or incidental services available to end-users is in the public interest if the adverse impact identified in Finding 215, supra, is negated by a pricing solution. DPS Ex. 223 (Prop), pp. 23-24; DPS Ex. 226 (Prop), p. 1; OAG Ex. 209, p. 2; DPS Ex. 224, pp. 5-6; USWC Ex, 167 (Prop), P. 3.

231. It would be impractical and beyond the scope of the PUC's expertise to establish and evaluate criteria for auxiliary or incidental services that must be provided with CENTRON resale to authorize the service.

232. Since the only detriment of such resale would be avoided by an

appropriate tariff or pricing mechanism, pure CENTRON resale is also in the public interest if the appropriate pricing structure is adopted.

233. Under current market penetration levels, the pricing mechanism for CENTRON resale should be revenue neutral for USWC. OAG Ex. 206 (Prop),

pp. 24-25; Initial Brief of Department of Public Service; December 10, 1991, pp. 49-50,

DISCUSSION

Determining whether a proposed service is required by the public convenience and necessity requires a balancing of all relevant factors. In findings 107-155, supra, the Administrative Law Judge has enumerated the benefits of CENTRON resale to both its end-users, U.S. West and, in certain instances, to concerns of public policy. In Findings 156-221, supra, the Administrative Law Judge has enumerated the adverse impacts of CENTRON resale on U.S. West end-users and on the public policy reflected in U.S. West's rate design. In summary, CENTRON resale does provide some benefit to a very limited number of end-users that are situated close to the U.S. West serving central office in buildings with a sufficient number of potential lines to make CENTRON discounts available. The Administrative Law Judge agrees with U.S. West that a significant percentage of CENTRON resale customers take the service to receive the equivalent of IFB/IFH service at a reduced rate. Some customers, however, take CENTRON because it offers system benefits that are not available with IFB/IFH service. See, Finding 107, supra.

It is also appropriate to consider the availability of auxiliary or incidental services offered by some CENTRON resellers in determining the requirements of the public convenience and necessity. The incidental services provided by ETI are detailed in Finding 115, supra. The stimulation factor found with resold CENTRON service indicates that cost saving alone does not account for increased demand. ETI offers services and assistance with telecommunications needs that cannot be obtained from a single vendor, even U.S. West. The Modified Final Judgment prevents U.S. West from providing some of the same services as ETI.

A CENTRON reseller does provide some economic benefit to U.S. West by slightly reduced administrative costs and absorbing a portion of what otherwise would be U.S. West bad debt. This "saving" to U.S. West must be offset by the full economic effect of resale on U.S. West detailed in Finding 215, supra.

CENTRON resale, at least when a location has a potential for some number of lines in excess of 50 also provides competition to PSTS PBX resale. It is appropriate to stimulate competition with PSTS PBX resale since PSTS PBX resale duplicates LEC facilities and results in a present contribution significantly less than resold CENTRON service.

On balance, therefore, CENTRON resale does provide some limited benefits to select U.S. West customers at an actual or potential cost to U.S. West ratepayers generally.

the only significant detriment of CENTRON resale is the lost or displaced contribution stated in Finding 215, supra. The existence of CENTRON resale

does not significantly increase the likelihood of system bypass, and it does not duplicate existing LEC facilities. If the adverse financial impact on U.S. West and its ratepayers is eliminated, limited benefits may be provided to some customers without detriment to the remaining ratepayers. The Administrative Law Judge believes that, with the appropriate pricing mechanism, CENTRON resale, at least as practiced by ETT, is in the public

interest. Properly priced, net benefits would be provided to some ratepayers by the service without adverse consequences to remaining ratepayers. DPS Ex. 224, pp. 5-6; OAG Ex. 209, p. 2. Even U.S. West, at one time, expressed a preference for an appropriate pricing structure rather than an outright prohibition on the provision of the service. USWC Ex. 167 (Prop), p. 3. ETI speculates that this change in position by U.S. West was motivated by MFJ considerations. ETI Ex. 3, pp. 1-2. The statement by the Department of Justice about the application of the MFJ to local resale issues appears to have alleviated this concern on the part of U.S. West. U.S. West, however, does not believe that CENTRON resale is in the public interest.

ETI argues that resold CENTRON service is in the public interest without changing the CENTRON pricing mechanism. See, Finding 159, supra. The Administrative Law Judge believes that the limited net benefits provided to a select group of business customers does not justify burdening other ratepayers with the effect of displaced or lost contribution in violation of the Commission's rate design established for U.S. West.

The pricing mechanism adopted to remove the adverse consequences of CENTRON resale should also be revenue neutral for U.S. West. U.S. West currently suffers no actual lost contribution at existing CENTRON market penetration levels. Those services currently paying the contribution displaced should receive a reduction. OAG Ex. 206 (Prop), pp. 24-25; DPS Initial Brief, December 10, 1991, pp. 49-50.

In analyzing the requirements of the public convenience and necessity, the Administrative Law Judge has applied, in a summary fashion, the various factors of the multifactor test stated in the MIEAC Order. Sy, Finding 32, supra. He specifically rejects both the position of ETI that the service is in the public interest as currently tariffed and the position of U.S. West, that such service could not be in the public interest, irrespective of the pricing mechanism employed.

It would be possible to conclude that there has been no demonstration that pure resale of CENTRON services without the offering of auxiliary services should also be authorized. As noted in the Findings, even pure resale provides at least the potential for some benefits to end-users. It would offer a customer choice, it would provide system features beyond that available with IFB/IFH service and it would allow the potential for competition with PBX/PSTS service in some buildings. If the only detriment of providing such service is the consideration of displaced or lost contribution, that concern can be removed by an appropriate pricing remedy.

The Administrative Law Judge has concluded it is appropriate to also authorize pure CENTRON resale for reasons that are largely practical. If the Commission approved value-added auxiliary service CENTRON resale as being in the public interest, it would have to specify what portion of that value-added

service, at a minimum, would qualify the applicant for its certificate.
Would

the deletion of one or more value-added services, for example, eliminate ETI from consideration as an approved CFNTRON reseller? Each certificate proceeding would have to be decided individually based on the Commission evaluation of the degree of value-added service provided by the proposed CFNTRON reseller. The Commission has indicated that it does not desire to relitigate the requirements of the public convenience and necessity on an individual case-by-case basis. See, In the Matter of a Consolidated

proceeding to investigate the Provision of Intrastate intercity Telecommunications Services Within the State of Minnesota, Docket No. P-442, at seq., October 15, 1985, pp. P2-23; InvestigAtion into the Resale_and sharing of Intrastate WATS, Docket No. P-421/CI-82-619, et seq., May 16, 1983, pp. 12 13. to make offering value-added service the basis for authorizing CENTRON resale would, at least theoretically, require the relitigation of the issue of public convenience and necessity each time less or differing services were offered.

Because the only detriment from such resale can be avoided through an appropriate pricing mechanism, no disadvantage to U.S. West ratepayers would result from approving even pure CENTRON resale. Some benefits may be provided to particular end-users without offering auxiliary services. That is a sufficient basis for concluding that pure resale of CENTRON services, appropriately tariffed by U. S. West, meets the requirements of the public convenience and necessity. The marketplace and customer acceptance would dictate the level of auxiliary or incidental services offered by CENTRON resellers.

VII. REGULATION OF CENTRON AND PBX RESELLERS

234. PBX resellers, including PSTS resellers, are telephone companies providing telephone service to the public. Minn. Stat. 237.01, subd. 2 (1990); Hearing Order, p. 3.

235. PSTS PBX resellers are exempt from Minn. Stat. 237.16 (1990), as long as service is only provided to tenants or to the PSTS PBX provider. Minn. Stat. sec. 237.68, subd. 5 (1990).

236. A non-PST; PBX reseller is subject to the requirements of Minn. stat. 237.16 (1990).

237. CENTRON resellers are telephone companies providing telephone service to the public. Minn. Stat. 237.01, subd. 2 (1990).

238. CENTRON resellers are subject to the requirements of Minn. Stat. 237.16 (1990). See, Discussion following Finding 41, supra.

239. As telephone companies, resellers are fully subject to all applicable statute; and Commission rules. USWC Ex. 167 (Prop), p. 26; OAG Ex. 208 (Prop), p. 15; DPS Ex. 218 (Prop), pp. 3-4; MIC Ex. 113, pp. 10-11; DPS Ex. 215, pp. 4-9; DPS Ex. 215, P. 10.

240. If a reseller has less than 30,000 customers, it is regulated under statutes and rules as an independent telephone company. Minn. Stat. 237.01, Subd. 3 (1990); MIC Ex. 131, pp. 10-11; DPS Ex. 215, pp. 4-9.

241. As telephone companies, local resellers have the duty to provide reasonably adequate service and facilities. Applicable service standards

under Commission rules are contained in Minn. Rules part 7810.5200 -
7810.5900
(1991). DPS Ex. 215. pp. 4 5.

1142. The service standards stated in Finding 241, *supra*, apply equally
to
PBX and CENTRON resellers. DPS Ex. 215, p. 10.

243. Since service quality is affected by the number of NARs purchased by the CFNTRON reseller, the reseller must ensure that the service standards required by rule are maintained. DPS Ex. 216 (Prop), p. a: OAG Ex. 208 'Prop), P. 15.

244. It is appropriate to allow local resellers to resell long distance service in order to provide their customers with the percent initial benefit of having a single provider. DPS Ex. 215, p. 5. However, resellers should not be permitted to block the customer's access to toll providers serving the area. Customers should be allowed to make long distance calls by dialing the access codes of the preferred toll provider. DPS Ex. 215, P. 5.

245. It is appropriate that the charges of resellers are subject to review by the Department and, ultimately, the Commission under Minn. Stat. sec. 237.06 (1990). DPS Ex. 218 (Prop), pp. 3-4. To that end, it is appropriate that resellers submit price lists to the Department for review. DPS Ex. 218 (Prop), P. 16. The Department could then recommend action to the Commission, if rates charged were unreasonable, discriminatory or involved inappropriate cross-subsidization. DPS Ex. 218 (Prop), p. 16. The Commission has authority to review and correct abuses under Minn. Stat. 237.06, 237.081 (1990).

246. It is appropriate to require resellers to ensure that end-users have the technical capability and information available to reach the 911 and 411 service providers as well as the local exchange operator. This direct access to the 911 emergency service provider should not include any extra charge. DPS Ex. 215, p. 9. End-users should be able to reach 411 or the operator by dialing 0, without paying an amount greater than the cost of the service to the local reseller. DPS Ex. 215, p. 9.

247. It is appropriate to require resellers to pay toward TAP, TACIP and 911 funds based on the number of lines or trunk equivalences. DPS Ex. 215, p. 8: OAG Ex. 208 (Prop), P. 18; USWC Ex. 171 (Prop), p. 17; MIC Ex. 113, P. 11. The reseller in this situation is best viewed as the customer of the LEC for purposes of assigning costs on a trunk equivalency basis. Therefore, the charges would be made by the LEC to the reseller and the LEC would collect these amounts and place them in the appropriate fund accounts.

248. Since a reseller is a telephone company providing service to the public, it has a duty to provide the service upon request if it is technically capable of providing the service. Regardless of a particular company's rate design, a local resale company may not simply refuse service. 54 Tr. 73.

249. Inclusion of customer information in the LEC directories should be available through the local resellers. DPS Ex. 215, p. 8. In addition, the local reseller should provide the LEC with appropriate information about the end users for directories, 911 service and related services. DPS Ex. 215, p. 8.

250. A reseller attempting to disconnect service to a customer must

comply with Minn. Rules pt. 7810.1800 - 7810.2300 (1991). DPS Ex. 215, p. 6.

251. Since such rules do not prohibit the disconnection of a customer for failure to pay telephone charges other than those for local service, a reseller may disconnect a customer for failure to pay any noncontested

telecommunication charges. The Commission may not amend its rules by an interpretation peculiar to resellers. If specific disconnect rules are desirable for reseller, the rulemaking process is appropriately followed. In re Application of Orr, 396 N.W.2d 657 (Minn. App. 1986),

DISCUSSION

the Commission has determined that PBX resellers, whether PSTS or non-PSTS, are telephone companies, as defined in Minn. Stat. sec. 237.01, subd. 2 (1990). The same result applies to CENTRON resellers. USWC Ex. 167 (Prop), P. 36; OAG Ex. 208 (Prop), P. 15; MIC Ex. 113, pp. 10-11. Even ETI admits that it is a telephone company subject to the jurisdiction of the Commission. Initial Brief of Enhanced TeleManagement, Inc., December 10, 1991, p. 1, Telephone companies with less than 30,000 subscribers are independent telephone companies under governing statutes and Commission rules. Minn. Stat. 237.01, subd. 3 (1990). As telephone companies providing telephone service to the public, resellers are subject to the general supervisory authority of the Commission. The initial inquiry is whether it is appropriate to require the LEC to, in effect, be the regulatory supervisor of the resellers by including in LEC tariffs restrictive provisions governing resale. The Administrative Law Judge agrees with MIC that regulatory oversight should not be the responsibility of the LEC: The Commission has been charged by statute to oversee the operations of telephone companies providing service in the State of Minnesota. MIC Ex. 113, pp. 10-11.

As independent telephone companies, resellers are subject to all of the applicable statutes and rules of the Commission regarding service quality and other aspects of the provision of service to end-users. The Commission is bound by its rules. Springborg v. Wilson & Co., 73 N.W.2d 433 (Minn. 1955). The Commission cannot vary the application of its rule; in this contested case. In re Application of Orr, 396 N.W.2d 657 (Minn. App. 1986). To the extent that the Commission desires to modify any existing rule to meet the particular requirements of resellers, it must do so in a Chapter 14 rulemaking proceeding. See, Discussion following Finding 282, infra.

The question remains as to the appropriate mechanism for regulating resellers. The Administrative Law Judge believes that the Commission could regulate non-PSTS PBX resellers and CENTRON resellers by requiring a certificate of authority under Minn. Stat. 237.16 (1990). See, Discussion following Finding 41, supra. But it could also be argued that Minn. Stat. sec. 237.16 (1990) has no application to PSTS PBX resellers and CENTRON resellers. See, Minn. Stat. VXEG 'LVFXVVLRLQ following Finding 41, supra- As previously discussed, however, whether a territorial certificate of authority is actually given makes little difference. Under Minn. Stat. 237.06 and 237-081 (1990), and other sections governing the provision of telephone service, the Commission has sufficient regulatory authority to oversee resellers. The primary information the Commission requires is the identity of entities providing service, the type of service provided, the location or locations where such service is provided, and the rates for service. With this information, the Commission, with the assistance of the Department of Public Service, could oversee the provision of telephone

service by resellers. Any unreasonable charges or practices could be subject to Commission investigation under Minn. Stat. 237.06 and 237.081 (1990), and necessary corrective orders could be issued by the Commission. In this context, whether a company has a territorial certificate is largely

irrelevant. if it possessed a certificate, failure to meet legal standards would result in revocation of the certificate. If no certificate were actually issued but a reseller's practices were found to be inappropriate under Minn. stat. 237.06 or 237.081 (1990), the Commission could issue such order as are just after investigation. including an order to cease providing service. Under either approach, the Commission can effectively oversee the provision of service by resellers.

if a territorial certificate of authority under Minn. stat. 237.16 (1990) were required, however, the Commission would not in each individual situation require a demonstration of the public convenience and necessity of resale. In this regard, the "lighthanded" approach to regulation adopted for COCOTS, radio common carriers and WATS resellers would appropriately be applied to resellers of service determined in this proceeding to be in the Public interest.

VIII. APPROPRIATE LEC RATE STRUCTURE

252. In order that reseller customers are not subsidized, the rates charged to resellers should cover a LEC's Long-run Incremental Cost of providing the service. DPS Ex. 218 (Prop), p. 4. Moreover, the price should provide an appropriate level of contribution. In the case of resale, this level should correspond to the contribution received from the class of service that end-users would have subscribed to in the absence of resale. DPS Ex. 218 (Prop), p. 5@ MIC Ex. 113, p. III OAG Ex. 206 (Prop), p. 24;

253. The level of contribution charged resellers should, however, not be subject to monopolistic abuse. That is, a LEC has the potential to drive resellers out of the market by setting rates higher than the reseller's end-user could obtain by subscribing directly to the LEC. Thus, the LEC should not be able to set prices far above reasonable contribution levels to drive resellers out of business. DPS Ex. 218 (Prop), p. 6.

254. The existing CENTRON tariff does not recover from resellers the displaced or lost contribution identified in Finding 215, supra.

255. In its initial direct case, USWC proposed a pricing solution which would impose mandatory measured usage pricing on CENTRON and PBX resellers. USWC Ex. 167 (Prop), p. 16; USWC abandoned the pricing solution due to MFJ concerns, but continued to maintain that a mandatory measured service rate was appropriate for resellers, if resale were not prohibited. USWC Ex. 169 (Prop), pp. 1-2; USWC Ex. 171 (Prop), p. 13. USWC stated that such a rate would partially recover contribution loss, while maintaining consistency in pricing. USWC Ex. 167 (Prop), p. 18.

256. No other party supported use of mandatory measured usage pricing for CENTRON resale and PBX resale to nontransient locations.

257. Measuring increases the total cost of providing resold CENTRON service by (()) Prop X. Updated USWC Ex. 100, Sch. 3, P. 1,

258. Despite a large cost increase, LMS offers no additional benefit.
[II Ex. 2, p. 10; ETI Ex. 49 (Prop), p. 3; DPS Ex. 220 (Prop), pp. 1-2; DPS
Ex. 218 (Prop), P. 8. Indeed, USWC would not require that resellers charge

their end-users on a usage basis. USWC Ex. 167 (Prop), p. 18. As such, the only benefits known to be associated with measuring, depression of demand and greater economic efficiency. are totally lost. 32 Tr 13.26.

259. The USWC proposed measured pricing plan will only recover approximately (()) Prop % of the loss in contribution attributed to resale. USWC Ex. 130 (Prop), p. 12; USWC Ex. 167 (Prop), p. 1A.

It is asserted that LMS pricing will allow to pricing consistency. However, USWC will not require mandatory measured pricing of its IFB customers, direct PBX customers or direct CENTRON customers. Thus, application of a mandatory measured rate to resellers is not consistent with USWC's pricing of other business services. USWC Ex. 169 (Prop), p. 18; DPS Ex. 220 (Prop), pp. 5-6.

261. Usage has no causal connection with the rate design change that a pricing solution remedies. A pricing solution, whether by LMS or flat-rate, attempts to recover the loss of contribution resulting from resale. Contribution is not an element of USWC's incremental cost and certainly has no connection to usage. DPS Ex. 220 (Prop), p. 6. Because of this lack of any causal connection, separate rates for resellers which apply mandatory measured pricing are unreasonable. DPS Ex. 218 (Prop), p. 10.

262. One reason to require LMS pricing would be to recognize greater cost associated with higher use customers. There is, however, little variance in usage characteristics among resale customers. DPS Ex. 218 (Prop), p. 9.

263. Commission precedent does not require or support LMS pricing of resold CENTRON service. OAG Ex. 208 (Prop), pp. 9-10; DPS Ex. 220 (Prop), pp. 4-5-

264. The loss of contribution resulting from resale can best be recovered through a flat rate surcharge applied on a CENTRON line basis. Such a surcharge is less costly to the system and less costly for resellers to administer. DPS Ex. 220 (Prop), p. 6.

265. It would be appropriate to order USWC to file a flat-rate surcharge for CENTRON rates charged to resellers that recovers the loss of contribution resulting from resale identified in Finding 215, supra; OAG Ex. 206 (Prop), P. 24; OAG Ex. 208 (Prop), p. 8; DPS Ex. 218 (Prop), p. 8; DPS Ex. 224, p. 6; DPS Ex. 220 (Prop), pp. 1-2.

DISCUSSION

In the Hearing Order, the Commission requested a consideration of the appropriate rate structure for a LEC to provide resold CENTRON service. ETI Argues that the existing CENTRON tariff is the most appropriate pricing mechanism for resold CENTRON service. ETI Ex. 2, pp. 6-7; ETI Ex. 1A (Prop), P. 18; ETI Ex. 48 (Prop), pp. 34-37. ETI's position is that it currently provides an appropriate level of contribution beyond Long-Run Incremental Cost. As stated in Findings 175, 176 and 230, supra, it is appropriate that the LEC recover from the CENTRON reseller the contribution displaced or lost

to the LEC as a result of resold CENTRON service. Because the current CENTRON tariff recovers no portion of lost or displaced contribution, some different pricing mechanism is appropriate.

ETI also argues that it would be unwise to change the pricing mechanism applicable to resold CENTRON service in isolation. In its mind, the pricing -f resold CENTRON service should be accomplished in conjunction with non-PSTS PBX resale and PST5 service applications, to preserve competition between the services. ETI Ex. 2. p. 7. Further, because PSTS and non-PSTS PBX resellers did not participate in this proceeding, ETI concludes that no differing rate proposal from the current CENTRON tariff should be adopted. -ETI Ex. 2, pp , h. 7

The Administrative Law Judge recognizes that whatever pricing mechanism the Commission adopts with respect to resold CENTRON service should be consistent with the final pricing of PBX resale, including PSTS applications. USWC Ex. 171 (Prop), P. 16; OAG Ex. 208 (Prop), pp. 5, 12.13. The Administrative Law Judge has not, however, recommended that non-PSTS PBX resale be determined to be in the public interest. Moreover, the Commission, in the Hearing Order, excluded PSTS issues from consideration in this proceeding. PSTS pricing is being considered by the Commission in a separate rulemaking docket. The Administrative Law Judge recommends the pricing mechanism discussed in this portion of the Report for CENTRON resale with the admonition to the Commission that any decision made with respect to this service be consistent with contribution levels required for PBX resale, including PSTS applications.

Initially, U.S. West argued that resale of CENTRON service was in the public interest if a LMS pricing mechanism recovered a portion of lost contribution. U.S. West then changed its position to contend that resold CENTRON service was not in the public interest. Even with this revised position, however, U.S. West still favors a usage-sensitive pricing mechanism if CENTRON resale is determined to be in the public interest. The Department of Public Service and the Office of the Attorney General support a flat rate surcharge per line to existing CENTRON rates to recover lost or displaced contribution.

The Administrative Law Judge adopts the flat surcharge proposed by the Department and the Office of the Attorney General because it recovers lost contribution without incurring the additional and significant costs associated with metering. DPS Ex. 218 (Prop), p. 9; USWC Ex. 167 (Prop), p. 21. Moreover, the usual reasons for supporting usage-sensitive pricing do not apply in the CENTRON resale situation. See, Finding 262, supra. Neither the MIFAC, nor COCOT precedents support the adoption of usage-sensitive pricing in

a resale context. DPS Ex. 220 (Prop), pp. 4-5; OAG Ex. 208 (Prop), pp. 9-10.

Finally, the Administrative Law Judge agrees with the Department that it is inconsistent to adopt usage-sensitive pricing for CENTRON resale but to allow

direct CENTRON customers and PBX customers to continue to receive flat rate pricing. DPS Ex. 220 (Prop), pp. 5-6; DPS Ex. 218 (Pvop), p. 10; ETI Ex. 49

(Prop), pp. 34-38. If the Commission believes that measured service is appropriate for CENTRON resale, however, it should consider the changes to the

U.S. Nest proposal suggested by the Department in DPS Ex. 220 (Prop), pp. 2-3.

IX- RESELLER PRICING

266. Each reseller that serves nontransient end users should have its rates determined on an individual basis as is currently the case with LECS.

it would be appropriate to treat resellers with less than 30,000 customers as Independent Telephone Companies for purposes of rate changes. These companies would be required to file a tariff or price list prior to implementing a new rate; however, print Commission approval would not be needed for the change to take effect. DPS Ex. 218 (Prop), pp. 13-16. If a company had more than 30,000 customers, it would be subject to the rate change provisions of Minn. Stat. sec 237.075 (1990) and other applicable sections. DPS Ex. 218 (Prop), pp. 131-6.

267. If a reseller elects to be governed by Minn. Stat. 237.58 (1990) and its local services are determined to be emergingly competitive, then, as a matter of law, the company would file price lists under Minn. Stat. 237.50

268. Customers could be billed by the reseller on either a flat rate or usage-sensitive basis. OAG Ex. 208 (Prop), p. 11.

269. Unreasonable rates for non-prerate regulated resellers would be subject to Commission review and correction under Minn. Stat. 237.06, 237.081 (1990),

X. LEC RESPONSIBILITIES WITH RESALE

A. LEC Service

270. The responsibility of the LEC to provide service to the demarcation point on the property should not be affected by whether resale exists. The LEC will need to allow access to its network for local service. The Commission has already ordered that a single demarcation point is all that is necessary for most multi tenant office buildings. See, Order, In the Matter of the Complaint Against Northwestern Bell Telephone Company by Michael Ives, P-421/C-87-680, November 13, 1987. There is no need to change that policy if resale is authorized.

271. Connection is, as a matter of law, under normal circumstances, guaranteed and the issue of timing falls within general quality of service regulation which is within the Commission's jurisdiction. Some LECS, such as USWC, have provisions for the time frame for providing service included in their General Exchange Tariff.

B. LEC Disconnection of Resellers

272. A reseller is both a business customer of the LEC and, itself, a telephone company providing telephone service to the public. Minn. Stat. 237.01, subd. 2 (1990).

273. The existing disconnection rules of the Commission, Minn. Rules pt. 7810.1800 - 7810.2800 (1991) apply to the disconnection of resellers. MIC Ex. 113, pp. 12-13; USWC Ex. 85, p. 11; USWC Ex. 169 (Prop), p. 23; OAG Ex. 209, P. 4.

274. Under the applicable Commission rules, the reseller is the LEC customer and may be disconnected with at least five days' notice for the reasons specified in Minn. Rules pt. 7810.1800 (1991) or with no notice for

the reasons specified in Minn. Rules pt. 7810.1900 (1991). Minn. Rules pt. 7810.2300 (1991).

275. The Commission must apply its rules as written and a company subject to such rules has the right to perform an act permitted by applicable rules. The Commission may only amend its rules through a statutory rulemaking proceeding. In re Application of Orr, 396 N.W.2d 657 (Minn. App. 1986).

276. If the Commission believes that the rights of reseller customers require recognition in the applicable rules, that subject is properly considered in a rulemaking docket. OAG Ex. 209, p. 4.

277. Under existing Commission rules, a customer may be disconnected for "failure of the customer to pay a bill for utility service when due." Minn. Rules pt. 7810.1800 A (1991). The only exception to that rule is that "[f]ailure to pay for business service at a different location and a different telephone number shall not constitute sufficient cause for disconnection of residence service and vice versa." Minn. Rules pt. 7810.2000 (1991).

278. As a consequence of Finding 272, supra, in the context of this rule, the reseller is the customer of the LEC.

279. Failure to pay for "utility service" historically has included failure to pay for undisputed toll calls and tariffed repair service. MIC Ex. 114, pp. 1-2.

280. Public policy favors a retention of the uniform past practice of the Commission stated in Finding 279, supra. MIC Ex. 114, p. 3-4.

281. If the Commission desires to limit the application of Minn. Rules pt. 7810.1800 A (1991) to failure to pay for local service as regards resellers only, it should do so in a rulemaking proceeding.

C. Last Resort Service Provider

282. A franchised LEC has an obligation to provide service upon request to all end-users within its service territory. That obligation is not affected by the presence of CENTRON resale. MIC Ex. 113, pp. 12-13; DPS Ex. 215, p. 7. Hence, if a LEC disconnects a reseller, it has an obligation to provide service to the customers of the reseller upon request subject only to payment for the tariffed services.

DISCUSSION

The Commission, in its Hearing Order, requested consideration of the responsibilities of the LEC to the reseller and, ultimately, to the customers of the reseller. As noted in the Findings, the current rules of the Commission and governing statutes apply to the LEC in its treatment of the reseller as a customer of the LEC and the reseller is, itself, a telephone company with respect to its own customers. All parties agree that the current

rules of the Commission would govern the service relationship between the LEC and the reseller, The Department did, however, raise two questions which they believe are unique in the resale relationship.

The Department first argues that a LEC should not be able to discontinue service to a reseller when there is nonpayment for undisputed toll bills. secondly, the Department argues that a reseller should only be disconnected after 30 days' notice has been given and the reseller's customers have had 20 days' notice of a proposed disconnection. DPS Ex. 15, p. 6. The suggestions of the Department, however well intentioned, conflict with the existing rules of the Commission and a longstanding interpretation of Minn. Rules pt. 7810.1800 A (1991). The Commission must apply it, rules as written. it may not amend the rules, enlarge them or expand their application apart from a rulemaking proceeding. In re Application of Orr, 396 N.W.2d 657, (Minn. App. 1986).

The Commission may within limits change the general interpretation of a rule without engaging in unpromulgated rulemaking, so long as it does not adopt an interpretation that conflicts with the rule. *Letellier v. Cleland*, 437 F. Supp. 936 (S.D. Iowa 1977). thus, it is generally held that in the absence of a statutory or constitutional barrier, an agency may change, modify, or reverse its policies and decisions or otherwise abandon earlier precedents and frame new policies. 73A C.J.S., Public Administrative Law and Procedure, 157, When an agency departs from its policies, procedures and precedents, it must provide a rational explanation for the departure and apply a reasoned analysis indicating that prior policies and standards are being deliberately changed and not casually ignored. *National Conservative Political Action Committee v. FEC*, 626 F.2d 953, 959 (D.C. Cir. 1980); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852, cert. den, 403 U.S. 923 (1971). Thus, in *Peoples Natural Gas Co. v. Minnesota P.U.C.*, 342 N.W.2d 348, 353 (Minn. App. 1983), the court noted that an agency must either conform to its prior norms and decisions or explain the reasons for its departure from such precedent. This means that an agency may depart from prior norms if a proper explanation is given. However, there are exceptions to that rule. Thus, in *Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1970), the court refused to permit an agency to deviate from its previous practices without prior announcement of the change where constitutionally protected liberty interests were involved. The court held that the rigid and technical construction of the statute proposed by the agency in that case, which departed from its prior precedents and adversely affected constitutional rights, would have to be implemented by rules. Moreover, in *National Conservative - Political Action Committee*, supra, the court held when an agency does not follow its previous procedures and precedents, prior notice is required where a private party justifiably relied upon the agency's past practice and is substantially affected by a change in that practice. Likewise, in *Shell Oil Co. v. Kleppe*, 426 F. Supp. 894 (D. Colo. 1977), the court held that where an established rule has been relied upon by investors, the agency should not reverse itself on a retroactive basis. These cases limit the general rule that an agency may depart from past practices, if the public may have relied upon prior practices to their detriment. *Am. Fed. of Gov. Employees v. Federal Labor Relations Authority*, 777 F.2d 751 (D.C. Cir. 1985). Hence, the Commission could possibly reinterpret the rule as suggested by the Department generally as applicable to all telephone companies in all situations. When, however, exceptions are created and policy choices are made

only with respect to CENTRON resellers under the guise of interpretation, the result is a prohibited unpromulgated rule. SA-AG v. Minnesota Department of Transportation, 447 N.W.2d 1 (Minn. App. 1989); Application of Northwestern Bell Telephone Co., 386 N.W.2d 723, 726-27, fn. 1 (Minn. 1986).

To the extent that the Commission desires to amend the disconnection rules as applied to resellers in accordance with the suggestions of the Department, the appropriate means is a rulemaking proceeding. The Office of the Attorney General has suggested to the Commission that it institute a rulemaking proceeding relating to its disconnection rules. OAG Ex. 209, p. 4, The Administrative law Judge recommends to the Commission that it consider the subject of the reseller as both customer and telephone company in any rulemaking proceeding commenced to amend the PUC's disconnection rules. In the absence of such a rulemaking proceeding, the rules must be applied as written.

XI. SCOPE OF AUTHORITY

'83. As a consequence of Finding 47, supra, any grant of authority should be limited to USWC exchanges. There is insufficient evidence in the record to determine that authorizing CENTRON resale in ILEC exchanges is required by the public convenience and necessity. See, Discussion following Finding 52, supra, and Initial Brief of the Minnesota Independent Coalition, December 10, 1991, pp. 2-14. MIC Ex. 113, p. 7; ETI Ex. 1A (Prop), p. 21; DPS Ex. 223 (Prop), p. 23.

284. Within the USWC service territory any authority granted to resellers should not be specific to particular premises. The important consideration is that the Department and the PUC have accurate information regarding the locations each reseller is servicing.

DISCUSSION

In its Hearing Order, the Commission asked whether resellers should receive statewide certificates, or authority which is geographically limited. It also requested information about whether the public interest would be affected by the geographic service area involved.

As stated in Finding 47, supra, the record does not contain sufficient evidence from which one can determine that CENTRON resale in ILEC exchanges is in the public interest. The Initial Brief of the Minnesota Independent Coalition, December 10, 1991, pp. 2-14, accurately discusses the limited record regarding CENTRON resale in ILEC exchanges. Currently, no CENTRON reseller provides service in ILEC exchanges. Moreover, there are significant differences between USWC and ILECs that could possibly require a different decision about the requirements of public convenience and necessity in ILEC exchanges.

A second consideration is the scope of the authority granted to a reseller in a USWC service territory. One could require a reseller to obtain

authority or approval for each separate building served. A second alternative would be a general grant of authority without limitation as to location. From a practical standpoint, the only important consideration is that the Department and the PUC have up-to-date information on the locations each reseller is servicing. If that information is timely provided, it would appear to serve little purpose to authorize service in each individual location. Moreover, as additional buildings were added to a CENTRON reseller's customer list, or as buildings were abandoned, multiple amendments to the certificate or authorization would be required. It does not appear to the Administrative Law Judge that any purpose would be served by individual

building authorizations and such a course of action could be relatively burdensome. The Administrative Law Judge recommends to the Commission that the reseller be given general authority to serve U.S. Nest exchanges with a requirement that it keep a current list of locations served on file with the Department and the Commission,

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Public Utilities Commission have jurisdiction over the subject matter of this hearing pursuant to Minn. stat. 237.06, 237.081, and 237.16 (1990).

C. The Commission gave proper notice of the hearing in this matter, has fulfilled all relevant, substantive and procedural requirements of law or rule, and has the authority to take the action proposed herein.

3. The legal test to be applied in this proceeding is whether the proposed services, CENTRON resale and non-PSTS PBX resale, are required by the public convenience and necessity. see, Findings 15-41, supra.

4. In determining the requirements of the public convenience and necessity, the Commission is required to weigh the public benefit of the proposed service against the public detriment.

5. Resellers bear the burden of proving that the public benefit of resale outweighs the public detriment,

6. There is no evidence in the record that non-PSTS PBX resale produces a net public benefit and the record includes significant evidence that non-PSTS PBX resale results in public detriment.

7. As a consequence of Conclusion 6, supra, the Commission should continue the current prohibition against non-PSTS PBX resale.

8. CENTRON resale without auxiliary services produces the benefits stated in Findings 107-114, supra.

9. CENTRON resale with the provision of auxiliary services results in the benefits stated in Findings 107-155, supra.

10. CFNTRON resale has a negative effect upon USWC. By providing CENTRON services with a lower contribution level than IFB/IFH service to customers who would not have taken CENTRON service under the existing CENTRON tariff, CENTRON resale produces a substantial current negative contribution displacement and potential contribution loss for USWC.

!I. At current market penetration levels, U.S. Nest loses no actual contribution by the lost or displaced contribution phenomenon stated in Finding 215, supra. The effect is to shift payment of the lost amounts to other services or residual ratepayers.

12. Balancing all benefits against the detriment stated, CENTRON resale, whether or not provided with auxiliary or incidental services, is required by the public convenience and necessity in U.S. West exchanges if the contribution lost or displaced is recovered from resellers. Any additional amounts received by U.S. Nest should be offset with corresponding price decreases to other services, at current CENTRON resale market penetration levels .

13. Resellers are telephone companies subject to existing statutes and commission rules. the Commission should assume direct regulatory oversight over local resellers rather than requiring the LEC to supervise the resellers through tariff provisions.

14 The appropriate USWC rate structure to be applied to resellers is the current U.S. Nest CENTRON tariff with a flat surcharge per line to recover the lost or displaced contribution stated in Finding 215, supra.

15. A LEC has the responsibility to provide service to a reseller as a consequence of the LEC's certificate of territorial authority. Its right to disconnect a reseller is defined in existing Commission rules. It has the responsibility to provide telephone service to the customers of a disconnected reseller, as a consequence of the LEC's franchise.

16. A CENTRON reseller must meet the service, customer disconnection and filing requirements applicable to a telephone company by statute and Commission rules.

17. Resellers should be required to pay toward TAP, TACIP and 911 funds based on the number of lines or trunk equivalencies.

18. A reseller should be required to provide information to the Commission relating to its operations, including locations where service is provided, and price lists or tariffs. It should have the responsibility to provide appropriate customer information to the LEC for use in directories, for 911 service and for customer recordkeeping purposes.

19. The Commission should only grant authority or recognize a reseller's activities within U.S. Nest exchanges. A grant of operating authority should not be limited to specific geographic premises.

20. Any Finding of Fact more properly termed a Conclusion, or any Conclusion more properly termed a Finding of Fact is hereby expressly adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE PUBLIC UTILITIES COMMISSION WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is the Recommendation of the Administrative Law Judge to the Public Utilities Commission that it issue an Order determining that CENTRON resale in

U.S. West exchanges is in the public interest. It should direct U.S. West to include in its CENTRON tariff a flat surcharge per line to recover the lost or displaced contribution stated in Finding 215, supra. U.S. West should also be directed to make that surcharge revenue neutral by simultaneously filing corresponding reductions in other service rates. In the event that U.S. West is unable to identify the services that are currently paying the displaced contribution, the revenue decrease should be made in rates charged residual ratepayers. The Commission should also prepare a list of the stated information a reseller must file with the PUC before the reseller commences reselling CENTRON service in U.S. West exchanges. A reseller should be required to file its price list with the Department and the PUC. The Commission should state clearly that a CENTRON reseller is a customer of the LEC for purposes of the Commission's rules and a telephone company, as regards its own customers. To the extent that the Commission desires to alter any of its rules that are applicable to telephone companies to accommodate specifically CENTRON resellers, it should institute a separate rulemaking proceeding for that purpose.

Dated this day of April, 1 992 .

BRUCE D. CAMPBELL
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Court Reported -- Harold Reiner & Associates, 203 - 15th Avenue Northwest, New Brighton, Minnesota 55112.